

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

JULY 1, 1942, TO DECEMBER 31, 1942

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MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF
DECEMBER 31, 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 Reappointment
for third term confirmed September 10, 1942.

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.

ACKNOWLEDGMENT

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



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

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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.

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

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

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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.

Brown & Haley	(C. C. A.) 28-1894.
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¹⁹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

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

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

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

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

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

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

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Gratz et al-----	(C. C. A.) 1-571, 2-545; (S. C.)
258 Fed. 314; 253 U. S. 421 (40 S. Ct. 572).	2-564.
Great Atlantic & Pacific Tea Co., The-----	(C. C. A.) 29-1591.
106 F. (2d) 667.	
Green Supply Co., etc-----	(D. C.) 35-958.
Guarantee Veterinary Co. et al-----	(C. C. A.) 5-567.
285 Fed. 853.	
Gulf Refining Co. et al. (Sinclair Refining Co. et al.)-----	(C. C. A.) 4-552; (S. C.) 6-587.
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).	
Gynex Corp. (Bureau of Hygiene), U. S. v-----	(D. C.) footnote, 34-1869; 35-
	987.
Hall, James B., Jr.-----	(C. C. A.) 20-740.
67 F. (2d) 993.	

¹⁰ For interlocutory order, see "Memoranda," 20-746, or S. & D. 724.

Halperin, Isidore, et al. (Wellworth Sales Co.)_	(C. C. A.) 34-1841.
Hamilton-Brown Shoe Co., U. S. v_____	(D. C.); footnote, 26-1495.
Hammond Lumber Co_____	(C. C. A.); footnote, 16-684; "Memoranda," 20-739.
Hammond, Snyder & Co_____	(D. C.) 5-578; (S. C.) 8-632. 234 Fed. 886; 267 U. S. 586 (45 S. Ct. 461.)
Harriet Hubbard Ayer, Inc_____	(C. C. A.) 10-754. 15 F. (2d) 274.)
Hartman Wholesale Drug Co., Inc., et al_____	(D. C.) 27-1693.
Haskelite Manufacturing Corp_____	C. C. A.) 34-1855. 127 F. (2d) 765.
Haynes & Co., Inc., Justin_____	(C. C. A.) 29-1578. 105 F. (2d) 988.
Helen Ardelle, Inc_____	(C. C. A.) 28-1894. 101 F. (2d) 718.
Herbal Medicine Co. (George Earl McKewen et al.).	(D. C.) 31-1913.
Hershey Chocolate Corp. et al_____	(C. C. A.) 33-1798. 121 F. (2d) 968.
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Heusner & Son, H. N._____	(C. C. A.) 29-1580. 106 F. (2d) 596.
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Hofeller Candy Co., Bob_____	(C. C. A.) 22-1138, 34-1842. 82 F. (2d) 647.
Hoffman Engineering Co_____	(C. C. A.) 21-1221.
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Hollywood Candy Co. (F. A. Martoccio Co.)_	(C. C. A.) 24-1608. 87 F. (2d) 561.
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Hudson Fur Dyeing Co. (Louis Estrin et al.)_	(C. C. A.) 34-1805.
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Ice Cream Manufacturers, International Asso- ciation of, et al.	(S. C. of D. C.) 22-1137.
Illinois Lumber & Material Dealers Ass'n, Inc.,	(C. C. A.) 27-1682. 97 F. (2d) 1005.
Imperial Candy Co_____	(C. C. A.) 23-1894. 101 F. (2d) 718.

¹⁷ For interlocutory order, see "Memoranda," 23-1968 or 1938 S. & D. 489.

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Jackson Sales Co., The (Robert C. Bundy)-----	(C. C. A.) 33-1819.
Jaffe, Benjamin-----	(C. C. A.) 34-1785. 123 F. (2d) 814.
Jenkins, Edward L., et al. (Antisepto Products Co., etc.).	(D. C.) 29-1637.
J. L. Hudson Co., The-----	(C. C. A.) 32-1889.
John J. Fulton Co.-----	(C. C. A.) 35-946. 130 F. (2d) 85.
Johnson Candy Co., Walter H.-----	(C. C. A.) 21-1195. 78 F. (2d) 717.
Jones Co., Inc., H. C.-----	(D. C.) 5-578; (S. C.) 8-632. 284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).
Justin Haynes & Co., Inc.-----	(C. C. A.) 29-1578. 105 F. (2d) 988.
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Klapp, Charles L. (The Cardinal Co.)-----	(D. C.) 29-1639.

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.

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

- Klesner, Alfred (Shade Shop, etc.)----- (C. A. of D. C.) 9-650, (S. C.)
6 F. (2d) 701; 274 U. S. 145 (47 S. Ct. 11-661; (C. A. of D. C.) 12-
557); 25 F. (2d) 524; 280 U. S. 19 (50 717; (S. C.) 13-581.
S. Ct. 1).
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- Kobi & Co., J. W.²¹----- (C. C. A.) 11-713.
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- Koch, Carl E., et al., U. S. v----- (D. C.) 34-1870.
- Koolish, Philip Harry, et al. (Standard Dis- (C. C. A.) 34-1863; 35-944.
tributing Co.)
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- Kritzik, David (General Merchandise Co.)--- (C. C. A.) 34-1808.
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- L. & C. Mayers Co., Inc.----- (C. C. A.) 27-1675.
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- Lane, Albert----- (C. C. A.) 35-949.
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- Leavitt, Louis²²----- (C. C. A.) 11-635, 21-1228.
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- Lee Boyer's Candy----- (C. C. A.) 34-1857.
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- Leisenring, Edwin L., et al. (U. S. Drug & (D. C.) 30-1701.
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- Lesinsky Co., H.----- (C. C. A.) 4-595.
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- Lewyn Drug, Inc.----- (D. C.) 28-1951.
- Liberty Co., etc. (Joe B. Hill et al.)----- (C. C. A.) 34-1800.
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- Macfadden Publications, Inc.²³----- (C. A. of D. C.) 13-605.
37 F. (2d) 822.
- Macher Watch & Jewelry Co., etc.----- (C. C. A.) 34-1835.
126 F. (2d) 420.

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

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

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

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708.	
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Martocchio Co., F. A. (Hollywood Candy Co.)--	(C. C. A.) 24-1608.
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Mayers Co., Inc., L. & C-----	(C. C. A.) 27-1675.
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Maynard Coal Co. ²⁴ -----	(S. C. of D. C.) 3-555, 6-575;
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cine Co.).	
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ner et al.).	
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Miller Drug Co-----	(D. C.) 31-1908.
Miller, Ward J. (Amber-Ita)-----	(C. C. A.) 21-1223.

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

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

Millers National Federation, et al.-----	(S. C. of D. C.) 10-739; (C. A. of D. C.) 11-705; (S. C. of D. C.) 14-675 (footnote); (C. A. of D. C.) 14-712.
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Minter Brothers, etc.-----	(C. C. A.) 28-1885.
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Mishawaka Woolen Mfg. Co.-----	(C. C. A., S. C.) 5-557.
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Modern Hat Works (Jacob Schachnow)-----	(C. C. A.) 32-1875.
Mogliner, George S., et al. (Merit Health Appliance Co.).	(D. C.) 32-1900.
Moir, John, et al. (Chase & Sanborn) ³⁷ -----	(C. C. A.) 10-674.
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Moretrench Corp.-----	(C. C. A.) 34-1849.
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National Association of Counter Freezer Manufacturers et al.	(S. C. of D. C.) 22-1137.
National Biscuit Co. ³⁸ -----	(C. C. A.) 7-603; (D. C.) 24-1618.
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National Merchandising Co., etc. (Perce P. Green et al).	(D. C.) 35-958.
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National Silver Co.-----	(C. C. A.) 24-1627; 28-1957; 30-1675.
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National Supply Co., etc. (Perce P. Green et al).	35-958.
Neff, George G. (Prostex Co.)-----	(C. C. A.) 32-1842.
117 F. (2d) 495.	

³⁶ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

³⁷ For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

³⁸ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

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³⁰ For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.

³¹ For interlocutory order, see "Memoranda," 20-745 or S. & D. 724.

³² For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

³³ For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

³⁴ For interlocutory order, see "Memoranda," 28-1967 or 1938 S. & D. 487.

³⁵ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

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Poy, Fong, et al.----- 124 F. (2d) 398.	(C. C. A.) 34-1790.
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Procter & Gamble Co. et al.----- 11 F. (2d) 47.	(C. C. A.) 10-621.
Progressive Medical Co., etc. (Blanche Kaplan).	(D. C.) 30-1690.
Prostex Co. (George G. Neff)----- 117 F. (2d) 495.	(C. C. A.) 32-1842.
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Q. R. S. Music Co. ³⁵ ----- 12 F. (2d) 730.	(C. C. A.) 10-683.
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Queen Anne Candy Co. et al.----- 84 F. (2d) 910.	(C. C. A.) 22-1149; 31-1832.
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Radio Wire Television, Inc., of New York et al.	(C. C. A.) 31-1882.
Ralačam Co. ³⁶ ----- 42 F. (2d) 430; 51 F. (2d) 587; 283 U. S. 643 (51 S. Ct. 587); 123 F. (2d) 34; 316 U. S. 149 (62 S. Ct. 966).	(C. C. A.) 14-683; (S. C.) 15-598; (C. C. A.) 33-1820; (S. C.) 34-1843.
Rand, Howard, et al. (Green Supply Co., etc.)-	(D. C.) 35-958.
Raymond Bros.-Clark Co.----- 280 Fed. 529; 263 U. S. 565 (44 S. Ct. 162).	(C. C. A.) 4-625; (S. C.) 7-594.
Real Products Corp. et al.----- 90 F. (2d) 617.	(C. C. A.) 25-1685.
Reed's Cut Rate Drug Store, etc. (Lenard Gotlieb et al.).	(D. C.) 31-1885.
Republic Iron & Steel Co.-----	(D. C.) (S. C. of D. C.), footnote, 3-543.
Research Products Co. (Robert C. Oberlin)----	(D. C.) 29-1626.
Rex Products Co., etc. (Earl Aronberg)----- 132 F. (2d) 165.	(D. C.) 29-1634; (C. C. A.) 35-979.

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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Rock, Monica M.----- 117 F. (2d) 680.	(C. C. A.) 32-1845.
Rogers Candy Co.----- 101 F. (2d) 718.	(C. C. A.) 28-1894.
Ron-Al Medicine Co., Dr., etc. (Irving Sofronski).	(D. C.) 29-1624.
Royal Baking Powder Co. ⁷⁷ ----- 281 Fed. 744; 32 F. (2d) 966.	(C. C. A.) 4-614; (S. C. of D. C.) 11-677, 701; (C. A. of D. C.) 12-740.
Royal Milling Co. et al. ⁷⁸ ----- 58 F. (2d) 581; 288 U. S. 212 (53 S. Ct. 335).	(C. C. A.) 16-679; (S. C.) 17-664.
Ryan Candy Co. (Southern Premium Manu- facturing Co., etc.)----- 83 F. (2d) 1008.	(C. C. A.) 22-1143.
Saks & Co.-----	(C. C. A.) 32-1877.
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Sealpax Co. (Oppenheim, Oberndorf & Co.) ⁷⁹ ----- 5 F. (2d) 574.	(C. C. A.) 9-629.
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Sherry's Cut Rate Drug Co., Inc.-----	(D. C.) 31-1903.

⁷⁷ For interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), see "Memoranda," 20-743 or S. & D. 715.

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

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

⁷⁸ For interlocutory order of lower court, see "Memoranda," 28-1968 or 1938 S. & D. 486.

⁷⁹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

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⁴⁰ 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.

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, JULY 1, 1942, TO DECEMBER 31, 1942

IN THE MATTER OF

CHARLES ROEHM, TRADING AS CHUMANIE MEDICINE
COMPANY

MODIFIED CEASE AND DESIST ORDER ¹

Docket 4530. Order, July 1, 1942

Modified order requiring respondent, his agents, etc., in connection with offer, etc., of his "Chumanie's Triple XXX Tablets," "Iron Tonic Pills," "Yellow Jacket Pills," "Double RR Tablets," and "Plantation C. M. Q. Capsules," or any other substantially similar preparation, to cease and desist from disseminating or causing to be disseminated, as in detail below set out, advertisements which (1) represent that said preparations constitute safe, competent, or effective treatments for various ailments and conditions, unless limited as specified; (2) falsely claim certain properties therefor, or set out falsely the causes of certain ailments and conditions; and (3) fail to reveal that his Triple XXX Tablets are not a safe or competent treatment for irregular or delayed menstruation, and to reveal the dangerous consequences which may result from the use thereof.

Before *Mr. William C. Reeves* and *Mr. Lewis C. Russell*, trial examiners.

¹ For complaint, findings, and original order, slightly modified hereby, see 34 F. T. C. 1181, 1190.

Commission's modifying order, on respondent's motion to modify, was 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 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."

Order

35 F. T. C.

Mr. J. V. Buffington and *Mr. John W. Carter, Jr.*, for the Commission.

Mr. Jack Glenn Williams, of Cincinnati, Ohio, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent, 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 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 gastro-intestinal 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

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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 it will have any therapeutic effect in the treatment of said conditions in excess of mitigating 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.

IN THE MATTER OF
DAVID CHALMERS TOBACCO COMPANY

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

Docket 4746. Complaint, Apr. 13, 1942—Decision, July 2, 1942

Where a corporation, engaged in the competitive interstate sale and distribution, among other things, of assortments of pipes 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 twelve of its "Yello-Bole" pipes and a punch-board for use in sale thereof under a plan by which purchasers securing, by chance, certain numbers received said pipes, as did those making last punch in each of sections into which board was divided, those securing certain other numbers each received 20 cents, and others received nothing, and under which the amount paid for a chance was determined by the number punched—

Sold such assortments to wholesalers, jobbers, and retailers by whom they were exposed and sold to the purchasing public in accordance with aforesaid plan involving sale of chance to procure pipes at much less than retail price thereof, and thereby supplied to, and placed in the hands of others the means of conducting lotteries in the sale of its products; contrary to established Government policy, and in competition with many who do not use such or other methods contrary to public policy;

With the result that many persons were attracted by said chance sales plan, and were thereby induced to buy and sell products of said corporation in preference to pipes of said competitors, whereby trade was unfairly diverted to it from them, and substantial injury was done to competition;

Held, That such acts and practices, under the circumstances set forth, 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 my said act, the Federal Trade Commission, having reason to believe that David Chalmers Tobacco Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues it complaint stating its charges in that respect as follows:

Complaint

PARAGRAPH 1. Respondent, David Chalmers Tobacco Co., is a corporation, organized and doing business under the laws of the State of Missouri with its office and principal place of business located at 724 Main Street, Kansas City, Mo. Respondent is now, and for more than 6 months last past, has been, engaged in the sale and distribution of smoking pipes, cigars, leather goods, and other articles of merchandise to jobbers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Kansas City, Mo., to purchasers thereof at their respective points of location in the various States of the United States other than Missouri and in the District of Columbia. There is now and has been for more than 6 months last past, a course of trade by respondent in such smoking pipes and other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of smoking pipes so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof.

One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes 12 "Yello-Bole" smoking pipes and a punchboard. Appearing on the face of the punchboard is the following inscription:

Complaint

35 F. T. C.

70 FREE NUMBERS 70

ALL NUMBERS ENDING IN "0" ARE FREE

Nos. 177-200-277-377-400-477-500-577 EACH RECEIVES A \$1.50 IMPERIAL

YELLO-BOLE PIPE—Nationally Advertised

Sweet as Honey YELLO-BOLE \$1.50 (Depiction of Pipe) Cured with Honey Free Draft Double Condenser	The Pipe That Is Cured With Honey EQUAL TO THE BEST AT ONLY \$1.50	All Numbers Ending in 1 PAY -----1¢ 2 PAY -----2¢ 3 PAY -----3¢ 4 PAY -----4¢ 5-6-7-8-9 EACH PAY ONLY 5¢ Numbers Ending in 0 Are FREE
IMPERIAL		

Nos. 22-44-66-122-144-166-222-244

266-322-344-366-422-444-466-522

544-566-622-644 Each Rec's 20 Cigarettes

Last Punch in Each Section Rec's A \$1.50 Imperial Yello-Bole Pipe

Said pipes are distributed to the purchasing public in accordance with the foregoing legend. The sales price of a punch on the board is determined by the number punched. Persons punching numbers ending in 1 pay 1 cent, 2 pay 2 cents, 3 pay 3 cents, 4 pay 4 cents, and persons punching the numbers 5, 6, 7, 8, and 9 pay 5 cents. Persons punching the number ending in "0" pay nothing for their chance to receive one of the pipes which are distributed to the persons punching the numbers designated on the punchboard legend. Persons punching the numbers which are not designated on the legend as receiving a pipe or cigarettes receive nothing for their money. The pipes are worth more than 5 cents each and the purchaser who purchases a number calling for a pipe or a package of cigarettes receives the same for from 1 cent to 5 cents or in some cases free. The numbers under the punches are effectively concealed from the purchasers or prospective purchasers until the punch has been made and the particular punch has been separated from the board. The pipes are thus distributed to the purchasers of the punches from the board wholly by chance and the amount such purchasers pay for the punch is also wholly determined by chance.

The respondent furnishes and has furnished other punchboards and pipe assortments for use in the sale and distribution of its

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smoking pipes by means of a game of chance, gift enterprise, or lottery scheme; such punchboards and assortments are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's smoking pipes, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to, and places in the hands of others, the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its smoking pipes and the sale of said smoking pipes by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of smoking pipes to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure smoking pipes at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute smoking pipes 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 smoking pipes by the element of chance involved therein and are thereby induced to buy and sell respondent's smoking pipes in preference to smoking pipes of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to 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 April 13, 1942, issued and thereafter served its complaint in this proceeding upon respondent, David Chalmers Tobacco Co., 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 June 9, 1942, the respondent filed its answer, in which it admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the 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, David Chalmers Tobacco Co., is a corporation organized and doing business under the laws of the State of Missouri with its office and principal place of business located at 724 Main Street, Kansas City, Mo. Respondent is now, and for more than 6 months last past has been, engaged in the sale and distribution of smoking pipes, cigars, leather goods, and other articles of merchandise to jobbers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Kansas City, Mo., to purchasers thereof at their respective points of location in the various States of the United States other than Missouri and in the District of Columbia. There is now and has been for more than 6 months last past, a course of trade by respondent in such smoking pipes and other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of smoking pipes so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof.

One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

Findings

This assortment includes 12 "Yello-Bole" smoking pipes and a punchboard. Appearing on the face of the punchboard is the following inscription:

70 FREE NUMBERS 70
ALL NUMBERS ENDING IN "0" ARE FREE

Nos. 177-200-277-377-400-477-500-577 EACH RECEIVES A \$1.50 IMPERIAL YELLO-BOLE PIPE—Nationally advertised

Sweet as Honey YELLO-BOLE \$1.50 (Depection of Pipe) Cured with Honey Free Draft Double Condenser IMPERIAL	The Pipe That Is Cured With Honey EQUAL TO THE BEST AT ONLY \$1.50	All Numbers Ending in 1 PAY -----1¢ 2 PAY -----2¢ 3 PAY -----3¢ 4 PAY -----4¢ 5-6-7-8-9 EACH PAY ONLY---5¢ Numbers Ending in 0 are FREE
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Nos. 22-44-66-122-144-166-222-244
266-322-344-366-422-444-466-522
544-566-622-644 Each Rec's 20 Cigarettes

Last Punch In Each Section Rec's A \$1.50 Imperial Yello-Bole Pipe

Said pipes are distributed to the purchasing public in accordance with the foregoing legend. The sales price of a punch on the board is determined by the number punched. Persons punching numbers ending in 1 pay 1 cent, 2 pay 2 cents, 3 pay 3 cents, 4 pay 4 cents, and persons punching the numbers 5, 6, 7, 8, and 9 pay 5 cents. Persons punching the number ending in "0" pay nothing for their chance to receive one of the pipes which are distributed to the persons punching the numbers designated on the punchboard legend. Persons punching the numbers which are not designated on the legend as receiving a pipe or cigarettes receive nothing for their money. The pipes are worth more than 5 cents each and the purchaser who purchases a number calling for a pipe or a package of cigarettes receives the same for from 1 to 5 cents or in some cases free. The numbers under the punches are effectively concealed from the purchasers or prospective purchasers until the punch has been made and the particular punch has been separated from the board.

The pipes are thus distributed to the purchasers of the punches from the board wholly by chance and the amount such purchasers pay for the punch is also wholly determined by chance.

The respondent furnishes and has furnished other punchboards and pipe assortments for use in the sale and distribution of its smoking pipes by means of a game of chance, gift enterprise, or lottery scheme; such punchboards and assortments are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's smoking pipes, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its smoking pipes and the sale of said smoking pipes by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of smoking pipes to the purchasing public by the method or plan hereinabove found involves a game of chance or the sale of a chance to procure smoking pipes at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute smoking pipes in competition with respondent, as above found, 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 smoking pipes by the element of chance involved therein and are thereby induced to buy and sell respondent's smoking pipes in preference to smoking pipes of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent 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.

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

It is ordered, That the respondent, David Chalmers Tobacco Co., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of smoking pipes, cigars, leather goods, and other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

IN THE MATTER OF

THE RENESOL CORPORATION, MAURICE GOLDBERG
AND CHARLES GOLDBLATT

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

Docket 3695. Complaint, Jan. 25, 1939—Decision, July 6, 1942

Where a corporation and two individuals, who controlled and directed its affairs and activities, engaged in the interstate sale and distribution of their "Renesol" medicinal preparation for the treatment of epilepsy—

Represented, directly and indirectly, through advertisements disseminated by them that their said product contained no harmful drugs, was not habit forming, and was safe to use;

The facts being that while phenobarbital—of which each capsule of said product contained a grain—is recognized by the medical profession as an appropriate treatment for some of the symptoms of epilepsy, the drug is definitely habit forming; and while various individuals have different tolerances therefor, there are those to whom the administration of a small dose would be dangerous and, in unusual instances, fatal; continued use of said drug in excessive amounts will, in some cases, affect the comprehension, concentration, memory, and judgment, and may produce toxic psychosis with hallucinations; their recommended dosage was excessive; and their product could not be considered safe and harmless;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby causing it to purchase said preparation; whereby injury was done to a substantial portion of said public:

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

Before *Mr. Lewis C. Russell* and *Mr. John L. Hornor*, trial examiners.

Mr. J. W. Brookfield, Jr., for the Commission.

L. J. and G. A. Shapiro, of Brooklyn, N. Y., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Renesol Corporation, and Maurice Goldberg and Charles Goldblatt, 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. Respondents, Maurice Goldberg and Charles Goldblatt, are individuals, maintaining their place of business at 551 Fifth Avenue, New York, N. Y., and are now and have been for more than 2 years last past engaged in the business of offering for sale and selling a medical preparation or compound for the treatment of epilepsy under the brand name "Renesol."

Respondent, The Renesol Corporation, was incorporated under the laws of the State of New York in the year 1933, and maintains its principal office and place of business at 551 Fifth Avenue, New York, N. Y. Respondent, The Renesol Corporation, is owned, dominated, controlled, and directed by the individual respondents, Maurice Goldberg and Charles Goldblatt, who, since its incorporation, have controlled, managed, and directed and now control, manage, and direct the affairs and activities of said respondent, The Renesol Corporation.

Said respondent, The Renesol Corporation, under the direction and control of the individual respondents, Maurice Goldberg and Charles Goldblatt, is now, and for more than 2 years last past, has been engaged in advertising, selling, and distributing for use in the treatment of epilepsy, a certain medical preparation designated "Renesol." Said respondents cause and for more than 2 years last past have caused, said preparation, when sold by them, to be shipped from their place of business in New York, N. Y., to the purchasers thereof located in various States of the United States other than the State of origin of such shipments, and in the District of Columbia. There is now and has been for more than 2 years last past, a course of trade in said preparation "Renesol" sold and distributed by the respondents in commerce between and among the various States of the United States, and in the District of Columbia.

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

Renesol DOES NOT CONTAIN Any BROMIDES OR any other HARMFUL or HABIT-FORMING DRUGS and is absolutely safe for use by both children and adults.

Renesol is not habit forming making it perfectly safe to use.

Renesol is not harmful—either to stomach, kidney or skin.

Most important RENESOL DOES NOT CONTAIN HABIT-FORMING OR HARMFUL DRUGS OF ANY KIND. It is absolutely safe to use for children as well as adults.

It is safe and harmless—so safe that even a child can take it.

The greatest gift that has ever been bestowed upon mankind is unquestionably HEALTH AND HAPPINESS. You who have suffered much will fully appreciate the normal, happy and healthy life which the RENESOL treatment assures you. Your RENESOL treatment will make you realize as it has for countless others who have been relieved of suffering and misery that a NEW LIFE OF JOYOUS FREEDOM FROM THE ILLS AND EMBARRASMENTS OF EPILEPSY AWAIT YOU!

Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' product, and of the ingredients contained therein, respondents have represented and do now represent, directly and indirectly, that respondents' preparation "Renesol" will assure to the user a normal, happy, and healthy life; that it contains no harmful drugs, that it is not habit forming; and that it is safe to use.

PAR. 3. The aforesaid representations and claims made by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact, respondents' preparation "Renesol" will not assure the user a normal, happy, and healthy life. It does contain harmful drugs and may be habit forming. It cannot be used indiscriminately with safety. Said advertisements of respondents are also false in that they fail to reveal that the use of this preparation, under the conditions prescribed in said advertisements and under such conditions as are customary and usual, may result in serious illness as well as nervous and mental disorders.

PAR. 4. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to said medicinal preparation, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the errone-

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ous and mistaken belief that respondents' said preparation does not in fact contain any harmful drugs, is not habit forming, is safe to use, and that its use will assure the user a normal, happy, and healthy life, and causes a portion of the purchasing public, because of said erroneous and mistaken belief so engendered, to purchase respondents' said preparation. As a result thereof, injury has been and is now being done by respondents to a substantial portion of the purchasing public in 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 of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission 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 25, 1939, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, certain facts agreed upon were read into the record, and testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before examiners of the Commission theretofore duly designated by it, and said agreed 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 agreed facts, testimony and other evidence, report of the trial examiners and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Renesol Corporation, is a corporation organized and existing under the laws of the State of New York and having its principal office and place of business at 551 Fifth Avenue, New York, N. Y. Respondents, Maurice Goldberg, an individual, and Charles Goldblatt, an individual, control, manage, and direct the

affairs and activities of the corporate respondent, and have since its organization in 1933 controlled, managed, and directed said affairs and activities.

PAR. 2. Respondent, The Renesol Corporation, under the direction and control of the individual respondents, Maurice Goldberg and Charles Goldblatt, is now, and for a number of years last past, has been engaged in advertising, selling, and distributing a medical preparation designated "Renesol" for use in the treatment of epilepsy. Said respondents cause, and for a number of years last past have caused, said preparation, when sold by them, to be shipped from their place of business in New York, N. Y., to purchasers thereof located in various States of the United States other than the State of New York and in the District of Columbia, and maintain and 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 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 preparation, 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 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:

Renesol DOES NOT CONTAIN ANY BROMIDES OR any other HARMFUL or HABIT-FORMING DRUGS and is absolutely safe for use by both children and adults.

Renesol is not habit forming, making it perfectly safe to use.

Renesol is not harmful—either to stomach, kidney, or skin.

Most important, RENESOL DOES NOT CONTAIN HABIT-FORMING OR HARMFUL DRUGS OF ANY KIND. It is absolutely safe to use for children as well as adults.

It is safe and harmless—so safe that even a child can take it.

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 respondents' product and of the ingredients contained therein,

respondents have represented and now represent, directly or indirectly, that respondents' preparation "Renesol" contains no harmful drugs, that it is not habit forming, and that it is safe to use.

PAR. 5. Respondents' product, "Renesol," is sold to members of the public in capsule form, and each capsule contains one grain of phenobarbital and some bicarbonate of soda. Respondents furnish to purchasers of "Renesol" directions for the administration thereof, which read in part:

Three (3) capsules are taken with a glass of water twice a day, once after breakfast, and again one hour before going to bed at night. This is continued until the patient begins to feel DROWSY AND DIZZY. If at the end of the third day, drowsiness has not occurred, then continue to take three (3) capsules twice a day for two more days, but NO MORE.

This initial dosage is for the purpose of placing patient fully under the influence of the treatment.

As soon as the drowsiness begins to occur, or at the end of the fifth day, EVEN IF THE DROWSINESS HAS NOT YET BEGUN, the patient begins to take two (2) capsules ONCE A DAY before going to bed at night. After having taken two (2) capsules once a day for three days, in the majority of the cases the symptoms of the disease are CONTROLLED and there is no longer any drowsiness. Then two (2) capsules a day is the proper dose to continue to take before going to bed.

The directions further provide that in certain contingencies the dosage be increased to the amount of the initial dosage, and provision is also made that in other contingencies a gradual reduction in dosage be made. Various suggestions are also made with respect to diet, regulation of bowels, and avoidance of excitement.

Phenobarbital in proper dosage under adequate direction and supervision is recognized by the medical profession as an appropriate treatment for some of the symptoms of epilepsy. It is a sedative and tends to ameliorate the violence of epileptic seizures. It is sometimes administered separately and sometimes in conjunction with bromides.

Through continued use of phenobarbital, a craving for it may be developed, and the denial of it to a patient who has become habituated to its use may result in the patient developing the usual symptoms of withdrawal of the drug. It is definitely a habit-forming drug, not to the extent that morphine is, but to a greater degree than some other drugs which are recognized as habit-forming. Various individuals have different tolerances for phenobarbital. Some individuals are exceedingly sensitive to it, some less so, and others may have more than the normal or average tolerance for it. There are, however, individuals to whom the administration of what might be considered a small dose would be dangerous and could, in unusual conditions, result in death.

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The dosage recommended by respondents is excessive. This fact was evidently recognized by respondents, and before the conclusion of the trial of this case they revised the directions furnished to purchasers and substantially reduced the dosage recommended therein. The continued use of phenobarbital in excessive amounts will, in some cases, affect the comprehension, concentration, memory, and judgment of an individual, and may produce toxic psychosis with hallucinations.

In view of the fact that phenobarbital is habit-forming, and of the varying degrees of sensitivity to the drug among individuals, as well as the effects which may result from the use of doses not usually considered excessive, the Commission concludes that respondents' product is not a safe and harmless one.

PAR. 6. The use by respondents of the false, deceptive, and misleading statements, representations, and advertisements with respect to "Renesol," disseminated as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' said preparation does not contain any harmful drugs, is not habit forming, and is safe to use, and causes a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' said preparation. As a result thereof, injury has been and is now being done by respondents to a substantial portion of the purchasing public in the various States of the United States and in the District of Columbia.

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 and the answer of respondents, certain agreed facts, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before examiners of the Commission theretofore duly designated by it, report of the trial examiners 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 said respondents have violated the provisions of the Federal Trade Commission Act.

Order

It is ordered, That respondent, The Renesol Corporation, its officers, agents, representatives, and employees, and respondents, Maurice Goldberg, and Charles Goldblatt, individuals, 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 the medicinal preparation designated "Renesol," or any other medicinal preparation which is substantially similar in composition or possesses substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from 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 "Renesol," which advertisement:

1. Represents, directly or through inference, that said preparation is not habit forming, or that it is safe or harmless.
2. Fails to reveal that the use of said preparation in excessive doses may result in serious injury to the physical and mental health of the user: provided, further, 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; and provided further, that such directions for use do not recommend dosage of said preparation in excess of that recommended in respondents' directions as revised during the trial of this case.

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

IN THE MATTER OF

**GENE HUGHES DRUG STORES, INC., ALSO TRADING AS
SACRAMENTO PHARMACAL COMPANY; AND EUGENE
P. HUGHES**

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

Docket 4316. Complaint, Sept. 17, 1940—Decision, July 6, 1942

Where a corporation and its president, engaged in interstate sale and distribution of their "SLENDODS" drug preparation; by advertisements in newspapers, circulars, and other advertising literature, directly and by implication—

Represented that their said preparation was a cure or remedy for obesity and constituted a safe, competent, and effective treatment therefor; and that use thereof "tones up the entire system," "Turns ugly Fat into Energy," and would relieve the body of excess fat without harmful effects;

The facts being it was not such a cure or safe, effective treatment for obesity; properties thereof were limited to effecting a reduction in weight through cathartic dehydration; and because of such action it might irritate the colon and rectum and tend to produce an irritation of the nervous system, resulting in serious injury to health;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such statements were true, and thereby induce purchase thereof:

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

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

Mr. DeWitt T. Puckett for the Commission.

Mr. A. M. Mull, Jr., of Sacramento, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Gene Hughes Drug Stores, Inc., a corporation, also trading as Sacramento Pharmacal Co., and Eugene P. Hughes, an individual, trading as Sacramento Pharmacal Co., and as officer of Gene Hughes Drug Stores, 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Gene Hughes Drug Stores, Inc., is a corporation organized, existing, and doing business under the laws of

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the State of California, with its office and principal place of business located at 500 J Street, Sacramento, Calif. Respondent, Eugene P. Hughes, is an individual and the president of the aforesaid corporation with his principal office and place of business located at 500 J Street, Sacramento, Calif. Both the individual respondent, Eugene P. Hughes, and the corporate respondent do business under the trade name of Sacramento Pharmacal Co.

PAR. 2. Respondents are now, and for several years past have been engaged in the sale and distribution of a drug preparation advertised and known as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules," which preparation has been offered for sale and sold as a treatment for obesity. Respondents have caused said preparation, 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 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; 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 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:

DON'T BE FAT

SLENDOIDS Nu-Form Capsules

An Improved formula that tones up the entire system. Turns ugly Fat into Energy. Users say "Amazing." Reduce this Safe, Easy Way.

At leading drug stores.

HELEN—the fat girl & I met again. She took the hint & is reducing with Slendoids from Walgreens. She says if I can she can too. Lou.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out

herein, the respondents have represented, directly, and by implication, that their preparation designated as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules" is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment therefor, and that the use of said preparation will tone up the entire system, turn ugly fat into energy, and relieve the body of excess fat without harmful effects.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinabove set forth are grossly exaggerated and false and misleading. In truth and in fact, respondents' preparation "SLENDOIDS," otherwise designated as "SLENDOIDS Nu-Form Capsules," is not a cure or remedy for obesity and does not constitute a safe, competent, or effective treatment therefor and its use will not tone up the entire system, turn fat into energy, or relieve the body of excess fat without harmful effects. The properties of said preparation are limited to effecting a reduction in weight because of the cathartic dehydration resulting from the use of this preparation. Because of such action the use of this preparation may irritate the colon and rectum and tend to produce an irritation of the nervous system resulting in serious injury to health.

PAR. 6. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations with respect to their said preparation, as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and advertisements are true and that the preparation designated as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules" is an improved formula that tones up the entire system, turns ugly fat into energy, and relieves the body of excess fat, safely and easily, and to induce, directly or indirectly, purchase by the public of respondents' said preparation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 17, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Gene Hughes Drug Stores, Inc., a corporation, also trading as Sacramento Pharmacal Co., and Eugene P. Hughes, an individual.

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trading as Sacramento Pharmacal Co., and as officer of Gene Hughes Drug Stores, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

A hearing was held in this matter on June 23, 1941, at which time a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents, was read into the record in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and which stipulation further provided that the Commission may proceed upon said statement of facts, without oral argument or the filing of briefs, to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding. Respondents 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 and testimony and other evidence in the form of a stipulation as to the facts upon the record; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Gene Hughes Drug Stores, Inc., is a corporation organized, existing, and doing business under the laws of the State of California, with its office and principal place of business located at 500 J Street, Sacramento, Calif. Respondent, Eugene P. Hughes, is an individual and the president of the aforesaid corporation, with his principal office and place of business located at 500 J Street, Sacramento, Calif. Both the individual respondent, Eugene P. Hughes, and the corporate respondent do business under the trade name of Sacramento Pharmacal Co.

PAR. 2. Respondents are now, and for several years past have been, engaged in the sale and distribution of a drug preparation advertised and known as "SLENDIDS" and as "SLENDIDS Nu-Form Capsules," which preparation has been offered for sale and sold as a treatment for obesity. Respondents have caused said preparation, 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 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 have 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; and respondents have also disseminated, and have caused 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 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:

DON'T BE FAT
SLENDOIDS Nu-Form Capsules

An improved formula that tones up the entire system. Turns ugly Fat into Energy. Users say "Amazing." Reduce this Safe, Easy Way.

At leading drug stores.

HELEN—the fat girl & I met again. She took the hint & is reducing with Slendoids from Walgreens. She says if I can she can too. L&U.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondents have represented, directly and by implication, that their preparation designated as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules" is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment therefor, and that the use of said preparation will tone up the entire system, turn ugly fat into energy, and relieve the body of excess fat without harmful effects.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinabove set forth, are grossly exaggerated and false and misleading. In truth and in fact, respondents' preparation "SLENDOIDS," otherwise designated as "SLENDOIDS Nu-Form Capsules," is not a cure or remedy for obesity and does not constitute a safe, competent, or effective treatment therefor, and its use will not tone up the entire system, turn fat into energy, or relieve the body of excess fat without harmful effects. The properties of said preparation are limited to effecting a reduction in weight because of the cathartic dehydration resulting from the use of this preparation. Because of such action the use of this preparation may

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irritate the colon and rectum and tend to produce an irritation of the nervous system, resulting in serious injury to health.

PAR. 6. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and advertisements are true and that the preparation designated as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules" is an improved formula that tones up the entire system, turns ugly fat into energy, and relieves the body of excess fat safely and easily, and to induce, directly or indirectly, purchase by the public of respondents' said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents upon the record; 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, Gene Hughes Drug Stores, Inc., a corporation, trading as Sacramento Pharmacal Co. or trading under any other name, its officers, representatives, agents, and employees, and Eugene P. Hughes, an individual, trading as Sacramento Pharmacal Co. or trading under any other name, and as officer of the corporate respondent, Gene Hughes Drug Stores, Inc., his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their preparation known as "SLENDOIDS" and as "SLENDOIDS Nu-Form Capsules," 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 respondents' preparation is a cure or remedy for obesity or that it constitutes a safe, competent, or effective treatment therefor.

(b) That the use of respondents' preparation will tone up the entire system or turn fat into energy.

(c) That the use of respondents' preparation will relieve the body of excess fat without harmful results.

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, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

It is further ordered, That the respondents shall, within 60 days 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

PEGGIE MORAN COMPANY, INC., AND IRENE
JOHNSTON, INC.

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

Docket 4415. Complaint, Dec. 13, 1940—Decision, July 7, 1942

Where two corporations, engaged in the interstate sale and distribution—principally to retail dealers, including department stores, drug stores, and beauty shops—of "Peggie Moran Savon" reducing soap, which the second, also operating a beauty shop, purchased from the first;

Acting in conjunction with each other and following a plan of cooperative advertising pursued by said first corporation under which it assisted its customers in the advertisement of said product, supplying advertising circulars and leaflets for distribution, paying a portion of the cost of advertising through allowing discounts on dealers' invoices upon the submission by the dealer of a tear sheet showing the newspaper advertisement, supplying its dealers with mats and copies for their use in newspaper advertising, and assisting them in the preparation of other newspaper advertisements—

Represented, through extensive advertisement of said soap by means of circulars and leaflets distributed among the public, and through advertisements inserted in Los Angeles newspapers of wide circulation in California and other States, directly or by implication, that their soap was an effective reducing agent through the use of which excessive flesh or fat could be removed from the body or from any particular portion or area thereof;

The facts being said soap was incapable of affecting the size or weight of the body; while Bentonite clay—the only ingredient therein for which they claimed any reducing properties—might, because of its hygroscopic action or affinity for water, withdraw small amounts thereof from the body through the skin, such amounts would be negligible; and any such hygroscopic action would also be materially lessened by reason of the substantial quantities of water used in manufacture of the soap and preparation of the lather therefrom;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said soap possessed reducing properties and values, thereby inducing it to purchase substantial quantities 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.

As respects the validity of claims in behalf of a soap represented as capable of and effective for reducing the body or certain parts thereof through use in bathing, by reason of the Bentonite clay included therein, with its hygroscopic properties or affinity for water, testimony offered in support of such claims by witnesses to the effect that they had obtained satisfactory results therefrom was insufficient to overcome the expert testimony that the soap was incapable,

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through said properties or otherwise, of affecting the size or weight of the body; it appearing that other users had testified that they had experienced no reduction and that some of those who testified to a reduction in weight following the use of the soap had been contemporaneously dieting.

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

Mr. Morton Nesmith and *Mr. Merle P. Lyon* for the Commission.

Mr. John F. Roberts, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Peggie Moran Co., Inc., a corporation, and Irene Johnston, 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, Peggie Moran 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 1729 $\frac{3}{4}$ North Wilcox Avenue in the city of Hollywood, State of California.

Respondent, Irene Johnston, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal place of business located at Suite 207, 811 West Seventh Street, in the city of Los Angeles, State of California.

PAR. 2. Said respondent, Peggie Moran Co., Inc., is now and for more than 2 years last past has been engaged in the sale and distribution of a soap product, which it is claimed possesses reducing properties, and which is currently sold under the trade name "Peggie Moran Savon." This product was formerly designated and sold under the name of "Peggie Moran Deluxus." Said respondent causes said product to be made up or manufactured for it on special order according to its own formula. Said respondent causes said product, when sold by it, to be transported from its place of business in Hollywood, Calif., to purchasers thereof located in various States of the United States other than the State of California, and in the District of Columbia. Said respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

The respondent, Irene Johnston, Inc., operates a permanent-wave and beauty salon, and in connection with this business distributes and sells said product known as "Peggie Moran Savon" and formerly sold and distributed as "Peggie Moran Deluxus," purchased from Peggie Moran Co., Inc. This respondent, likewise, causes said product, when sold by it, to be transported from its said place of business in Los Angeles, Calif., to purchasers thereof located in various States of the United States other than the State of California, and in the District of Columbia. This respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

Said respondents have cooperated each with the other in the sale and distribution of said product in said commerce.

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 said product known as "Peggie Moran Deluxus" and "Peggie Moran Savon" by insertion in newspapers having a general circulation, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product and have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning said product by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

I GAVE MYSELF A NEW FIGURE

(Picture of Mrs. May B. Moran, president of respondent Peggie Moran Co., Inc., before using Peggie Moran Savon). Come in today and get my circular with true and remarkable stories of what some women have done with SAVON—giving to themselves new contours and trimmer lines—truly "new figures for old"—adding charm and gracefulness where bulging lines had marred their attractiveness.

(Picture of same person after using Peggie Moran Savon, showing marked re- Many drugs taken to reduce are often dangerous to health. Dieting and violent exercise are not always advisable. Women who have

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duction in size, stature and weight.)

used SAVON have not resorted to any of these. Yet we have on file unsolicited letters from women who say **THEY HAVE CUT DOWN THE MEASUREMENTS OF THEIR HIPS, LEGS, ANKLES, WAIST, BUST, NECK and ARMS.** Among my personal acquaintances I have seen a wonderful change. I know what it has done for me. One can not read these letters and actually see the changes in the figures of SAVON users without **MARVELLING** at what has taken place.

As you read these letters and see these pictures you will realize why, to me, SAVON means a **NEW ERA FOR WOMEN** with those embarrassing bulges who have found it impossible to wear the clothes every woman desires.

My records—filed with my own physician—show my measurements before—and after—I started applying SAVON.

DATE	HIPS	WAIST	NECK	BUST
4/1/38	48	44	13½	50
9/6/39	43	34	12½	41

I want you to use SAVON with the full knowledge of what it really is—a way other women and I have trimmed inches from bulging curves. I hope SAVON will bring to YOU the same gratifying pleasure and delight it has to me—and to those whose letters are reproduced in my circular.

(Dealer's signature and address)

* * * * *

I GAVE MYSELF A NEW FIGURE

(Picture of Mrs. Charlotte Russell, Bishop, Calif., or 8227 Kirkwood Dr., Hollywood, Calif., after using Peggie Moran Savon, showing marked reduction in size and weight.)

Actual photographs of the woman who wrote the letter below. From her new figure Miss E. gets genuine pleasure increased by the inner feeling we all get when we realize we are "better looking" and can pick and wear styles in clothes we formerly hesitated to even try on. There is nothing in SAVON which by any medical or scientific actions, should act as a "reducer," yet women say they have given themselves new contours and trimmer lines, truly "new figures for old"!

"Dear Mrs. Moran:

I want so very much to let you know how (Picture of Mrs. Charlotte very happy I am over the loss of inches, after Russell, before using Peggie the use of Peggie Moran SAVON. Moran Savon.)

I started using SAVON September 21, 1938; my measurements were

HIPS	WAIST	BUST	UPPER ARM
42 in.	31 in.	37 in.	13 in.

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My measurements today, September 14, 1939, are:

HIPS	WAIST	BUST	UPPER ARM
38 in.	26½ in.	33 in.	10 in.

It is so easy and pleasant to use. With time you will really get the inches off that you desire.

Miss C. R."

(Dealer's signature and address)

REDUCE SAFELY

* * * with Peggy Moran Reducer, believe it or not "A Soap." Its magic lather reduces superfluous flesh. No special diet or strenuous exercise, live sensibly. The results of this simple treatment will amaze you. One month's daily use of this non-irritating lather proves its efficiency. \$2 per bar. Mail orders invited.

IRENE JOHNSTON

5th Floor
811 W. 7th St.
Tucker 9487

* * * * *

REDUCE—SAFELY

PEGGIE
MORAN
REDUCER
A Soap

It washes away excess pounds, causes superfluous flesh to disappear.

Remember—

No medicine, no diet, no strenuous exercise, it takes only a few minutes daily.

\$2.00

Mail Orders Invited

Irene Johnston
5th Floor, 811 W. 7th St.
Tucker 9487

* * * * *

WANT TO REDUCE?

No diet! No exercise! Use Peggy Moran soapy lather on fatty spots a few minutes daily at home, Easy! Quick! Sane! The results will amaze you. Ask us about Peggy Moran Deluxus at \$2 per bar. Mail orders invited.

IRENE JOHNSTON

5th Floor
811 W. 7th St.

* * * * *

STREAMLINE YOUR FIGURE

WITHOUT strenuous EXERCISE or DIET

Use Peggie Moran's soapy lather a few spare minutes daily on fatty spots. In the privacy of your home, the results of this simple treatment will amaze you. Women who have used Savon say they have cut down the measurements

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of their hips, legs, ankles, bust, neck and arms. Easy to apply. PEGGIE MORAN'S SAVON

(Picture of a cake of soap)

\$1 Regular \$2.00 Cake

SPECIAL PRICE

During August only

Phone Tu. 9487 or Mail

This Coupon Today

IRENE JOHNSTON, 2nd Floor, 811 W. 7th St., L. A. Please send me-----
Cakes Peggy Moran's SAVON-----Cash enclosed-----c. o. d.

Name-----

Address-----

City-----

* * * * *

"I gave myself a new figure" is the boast of hundreds of women who have used Peggy Moran's way to slenderness. Peggy Moran Savon, applied nightly, will assist in changing your figure to the proportions you desire. At drug and department stores.

Peggie Moran's Savon, mineral clay soap to help you be trimmer!

"New figures for old" is the watchwork of Peggie Moran's pine scented SAVON! If you're concerned about bulging lines, you'll like the help this soap offers. Apply nightly.

Cake-----\$2.00

(Picture of slender woman)

ROBINSONS'

(J. W. Robinson Co.,

7th Street at Grand Avenue,
Los Angeles, Calif.)

* * * * *

"I GAVE MYSELF A NEW FIGURE"
PEGGY MORAN

(Picture of Peggie Moran, president of respondent, before using Peggie Moran Savon.) The true and remarkable story of what some women have done with SAVON—giving to themselves new contours and trimmer lines—truly

(Picture of same person after using Peggie Moran Savon, showing marked reduction in size, stature, and weight.) NEW FIGURES FOR OLD—adding charm and gracefulness where BEFORE bulging lines had marred their attractiveness.

SCIENCE AND MEDICINE SAY

"IT CAN'T HAPPEN"—BUT IS HAS—
AND I DON'T KNOW WHY!

(Picture of Peggie Moran.) Two years ago I was excessively overweight. My physician would not allow me to diet or exercise, but with his consent, I experimented with various combination of soaps—and at last discovered SAVON.

There is nothing in SAVON which, by any medical or scientific action, should act as a "reducer." Yet as I continued to use it, friends and business associates

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noticed the improvement in my figure and asked for samples of SAVON. They came back with enthusiastic reports of what SAVON had done for them. The demand grew and voluntary publicity directed other women to me.

Many drugs taken to reduce are often dangerous to health. Dieting and violent exercise are not always advisable. Women who have used SAVON have not resorted to any of these. Yet we have on file unsolicited letters from women in various parts of the country who say **THEY HAVE CUT DOWN THE MEASUREMENTS OF THEIR HIPS, LEGS, ANKLES, WAIST, BUST, NECK and ARMS.** Among my personal acquaintances I have seen a wonderful change. I know what it has done for me. One cannot read these letters and actually see the changes in the figures of SAVON users without **MARVELLING** at what has taken place.

* * * * *

All of said statements, together with other statements of similar import and meaning appearing in respondents' advertising literature, purport to be descriptive of respondents' product and of its effectiveness in use. In all of said advertising literature respondents directly, through the statements and representations herein set out and through other statements and representations of like and similar import and effect, represent, and have represented, that the product formerly known as "Peggie Moran Deluxus" and currently known as "Peggie Moran Savon," was and is, in fact, a reducing soap and that the application of said soap to the fatty portions of the body will cut down the measurements thereof and will cause one to reduce at those portions of the body where applied; will cause one to become slender; that it will "wash away" pounds and cause superfluous flesh to disappear without resort to a diet or exercise, and that it will give one a new figure.

PAR. 4. The representations made by the respondents and the implications therefrom as to the nature and effectiveness of said product, are false, misleading, and deceptive, and greatly exceed those which might truthfully be made for said preparation. In truth and in fact the use of said product will not rid the body of any excess fat; its use will not "wash away" pounds and cause superfluous flesh to disappear without resort to a diet or exercise; its use will not give one a new figure nor cause one to become slender. It does not contain or possess any reducing properties or ingredients.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to said product "Peggie Moran Deluxus" and "Peggie Moran Savon," has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that

respondents' said product is in fact a reducing agent; that it will rid the body of excess fat; that it will "wash away" pounds and cause superfluous flesh to disappear without resort to a diet or exercise; that it will give one a new figure and cause one to become slender, and that it possesses reducing properties or contains reducing ingredients; and causes a portion of the purchasing public, because of said erroneous and mistaken belief so engendered, to purchase said product.

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 December 13, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Peggie Moran Co., Inc., a corporation, and Irene Johnston, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of 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 attorney for one of the respondents, before 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, 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, Peggie Moran Co., Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business at 1729 $\frac{3}{4}$ North Wilcox Avenue, Hollywood, Calif.

Findings

Respondent, Irene Johnston, Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business at 811 West Seventh Street, Los Angeles, Calif.

PAR. 2. Respondent, Peggie Moran Co., Inc., has since January 1939 been engaged in the sale and distribution of a cosmetic product in the form of a soap, intended for use in the removal of excess flesh from the human body. The soap was formerly designated as "Peggie Moran Deluxus" and as "Peggie Moran Reducer," but the name was later changed to "Peggie Moran Savon."

Respondent, Irene Johnston, Inc., is engaged in the operation of a beauty shop, and in connection with this business it has also engaged in the sale and distribution of the soap referred to above, such soap having been purchased by it from Peggie Moran Co., Inc.

In the course and conduct of their businesses the respondents have caused the soap, when sold by them, to be transported from their places of business in the State of California to purchasers thereof located in various other States of the United States. The respondents have maintained a course of trade in the soap in commerce among and between the various States of the United States.

The record indicates that the respondents have discontinued the sale of the product since this proceeding was instituted.

PAR. 3. The Peggie Moran Co., Inc., sold its soap principally to retail dealers, including department stores, drug stores, and beauty shops, and for the purpose of promoting the resale of the soap by its customers to the public it has assisted its customers in advertising the soap. Advertising circulars and leaflets have been supplied to dealers for distribution to the public. To encourage newspaper advertising, the company has also followed the practice of paying a portion of the cost of such advertising, such payment being made by means of discounts allowed dealers on their invoices. Before allowing such discounts, the company has required that the dealer submit a tear sheet of the newspaper showing the advertisement. The company has not only supplied its dealers with mats and copy for use in newspaper advertising, but through its advertising manager has also assisted its dealers from time to time in the preparation of other newspaper advertisements.

Following this plan of cooperative advertising, the respondents, acting in conjunction with each other, have advertised the soap extensively both by means of circulars and leaflets distributed among the public, and by means of advertisements inserted in Los Angeles newspapers having a wide circulation not only in the State of California

but in other States as well. Among and typical of the statements appearing in the advertisements were the following:

I GAVE MYSELF A NEW FIGURE

Come in today and get my circular with true and remarkable stories of what some women have done with SAVON—giving to themselves new contours and trimmer lines—truly “new figures for old”—adding charm and gracefulness where bulging lines has marred their attractiveness.

Many drugs taken to reduce are often dangerous to health. Dieting and violent exercise are not always advisable. Women who have used SAVON have not resorted to any of these. Yet we have on file unsolicited letters from women who say **THEY HAVE CUT DOWN THE MEASUREMENTS OF THEIR HIPS, LEGS, ANKLES, WAIST, BUST, NECK and ARMS.** Among my personal acquaintances I have seen a wonderful change. I know what it has done for me. One can not read these letters and actually see the changes in the figures of SAVON users without MARVELLING at what has taken place.

As you read these letters and see these pictures you will realize why, to me, SAVON means a **NEW ERA FOR WOMEN** with those embarrassing bulges who have found it impossible to wear the clothes every woman desires.

My records—filed with my own physician—show my measurements before—and after—I started applying SAVON.

DATE	HIPS	WAIST	NECK	BUST
4/1/38	48	44	13½	50
9/6/39	43	34	12¼	41

I want you to use SAVON with the full knowledge of what it really is—a way other women and I have trimmed inches from bulging curves. I hope SAVON will bring to YOU the same gratifying pleasure and delight it has to me—and to those whose letters are reproduced in my circular.

(In connection with this reading matter there also appeared pictures of Mrs. May B. Moran, president of the Peggie Moran Co., Inc., purporting to show reduction in size and weight resulting from the use of the soap.)

I GAVE MYSELF A NEW FIGURE

Actual photographs of the woman who wrote the letter below. From her new figure Miss R. gets genuine pleasure increased by the inner feeling we all get when we realize we are “better looking” and can pick and wear styles in clothes we formerly hesitated to even try on. There is nothing in SAVON which by any medical or scientific action, should act as a “reducer,” yet women say they have given themselves new contours and trimmer lines, truly “new figures for old!”

Dear Mrs. Moran:

I want so very much to let you know how very happy I am over the loss of inches, after the use of Peggie Moran SAVON.

I started using SAVON September 21, 1938; my measurements were

HIPS	WAIST	BUST	UPPER ARM
42 in.	31 in.	37 in.	13 in.

27

Findings

My measurements today, September 14, 1939, are:

HIPS	WAIST	BUST	UPPER ARM
38 in.	26½ in.	33 in.	10 in.

It is so easy and pleasant to use. With time you will really get the inches off that you desire.

Miss C. R.

(In connection with this reading matter there also appeared pictures of the writer of the letter, purporting to show reduction in her size and weight resulting from the use of the soap.)

* * * * *

REDUCE SAFELY

* * * with Peggy Moran Reducer, believe it or not "A Soap." Its magic lather reduces superfluous flesh. No special diet or strenuous exercise, live sensibly. The results of this simple treatment will amaze you. One month's daily use of this non-irritating lather proves its efficiency. \$2 per bar. Mail orders invited.

REDUCE — SAFELY
PEGGIE MORAN REDUCER
A SOAP

It washes away excess pounds, causes superfluous flesh to disappear.

Remember—

No medicine, no diet, no strenuous exercise, it takes only a few minutes daily.

* * * * *

WANT TO REDUCE?

No diet! No exercise! Use Peggy Moran soapy lather on fatty spots a few minutes daily at home. Easy! Quick! Sane! The results will amaze you! Ask us about Peggy Moran Deluxus at \$2 per bar. Mail orders invited.

* * * * *

STREAMLINE YOUR FIGURE
WITHOUT strenuous EXERCISE or DIET

Use Peggie Moran's soapy lather a few spare minutes daily on fatty spots. In the privacy of your home, the results of this simple treatment will amaze you. Women who have used Savon say they have cut down the measurements of their hips, legs, ankles, bust, neck and arms. Easy to apply. PEGGY MORAN'S SAVON.

* * * * *

Peggie Moran's Savon, mineral clay soap to help you be trimmer!
"New figures for old" is the watchword of Peggie Moran's pine scented SAVON!
If you're concerned about bulging lines, you'll like the help this soap offers. Apply nightly.

* * * * *

SCIENCE AND MEDICINE SAY
IT CAN'T HAPPEN! — BUT IT HAS —
AND I DON'T KNOW WHY!

Two years ago I was excessively overweight. My physician would not allow me to diet nor exercise, but with his consent, I experimented with various combination of soaps—and at last discovered SAVON.

There is nothing in SAVON which, by any medical or scientific action, should act as a "reducer." Yet as I continued to use it, friends and business associates noticed the improvement in my figure and asked for samples of SAVON. They came back with enthusiastic reports of what Savon had done for them. The demand grew and voluntary publicity directed other women to me.

PAR. 4. Through the use of these advertisements and others of a similar nature, the respondents represented, directly or by implication, that their soap was an effective reducing agent and that through the use of the soap excess flesh or weight could be removed from the body and from any particular portion or area of the body.

PAR. 5. The soap was manufactured for the Peggie Moran Company, Inc., by a Los Angeles manufacturer according to a formula supplied by the Company. The formula was:

Bentonite clay-----	35%
Pure soap-----	42%
Oil of pine-----	3%
Distilled water-----	20%

The directions for the use of the soap were as follows:

Before retiring, make a lather of Savon and apply either with the hands or a soft brush over desired parts of the body, RUBBING INTO THE SKIN FOR NOT OVER FIVE MINUTES. Then apply another lather of Savon and allow to dry. In the morning take a warm bath or shower.

PAR. 6. The only ingredient in the soap for which any reducing properties are claimed by respondents is the Bentonite clay. Bentonite clay is a common industrial clay consisting principally of silica and aluminum, but containing other chemical substances in minor proportions, the exact analysis depending upon the region from which the clay is obtained. The clay is used in industry principally as a bonding agent, being employed in the making of such products as emery wheels, glasses, and porcelains. It possesses hygroscopic properties to a slight degree; that is, it has an affinity for water and draws water to it. Because of its hygroscopic action the clay in respondents' soap might conceivably withdraw small amounts of water from the body through the skin, but such amounts would be so small as to be negligible. Moreover, the hygroscopic action of the clay would be materially lessened by reason of the fact that substantial quantities of water are used both in the manufacture of the soap and in the preparation of the lather therefrom, with the result that the point of saturation of the clay might be reached or at least approached before the application of the lather to the body. The expert testimony in the record establishes

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that the soap is incapable, through its hygroscopic properties or otherwise, of affecting the size or weight of the body.

PAR. 7. The respondents offered no expert testimony in support of their claims, but rest their case on the statements of certain witnesses who testified that they had obtained satisfactory results from the use of the soap. Other users of the soap, however, testified that they had experienced no reduction in weight. It appears also that some of the witnesses who testified to a reduction in weight following the use of the soap had been observing a diet during the same period, and it is questionable whether the reduction testified to by them was due to the dieting or to the use of the soap. After careful consideration of the testimony of these witnesses, the Commission is of the opinion that it is insufficient to overcome the expert testimony in the record.

PAR. 8. The Commission therefore finds that the representations made by the respondents with respect to their product, as set forth in paragraphs 3 and 4 hereof, were erroneous and misleading, and constituted false advertisements.

PAR. 9. The Commission further finds that the use by the respondents of these false advertisements had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' product possessed properties and values which it did not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' product as a result of such erroneous and mistaken belief.

CONCLUSION

The 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 answers of the respondents, testimony and other evidence in support of the allegations of the complaint and in opposition thereto, taken before a trial examiner of the Commission theretofore duly designated by it, the report of the trial examiner 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, Peggie Moran Co., Inc., a corporation, and Irene Johnston, Inc., a corporation, and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' cosmetic product designated "Peggie Moran Savon," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that respondents' product possesses any value in the removal of excess flesh or excess weight from the body or from any particular part or area of the body.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' product, which advertisement contains any representation prohibited in paragraph 1 hereof.

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.

Complaint

IN THE MATTER OF

THE CLIMAX CLEANER 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 4668. Complaint, Jan. 13, 1942—Decision, July 7, 1942

Where a corporation, engaged in the interstate sale and distribution of its "Climax Wall Paper Cleaner"—

Represented that its said product would not crumble when used for cleaning all types of wall paper, through the use particularly of the terms "Non-Crumbling" and "Crumble-less" in statements in radio continuities, postal cards, window and counter display cards, and other advertising matter broadcast and distributed, and through labels on the containers thereof;

When, used for cleaning certain types and varieties, it would and did crumble; With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, and into purchase of substantial quantities of said product as a result of such mistaken belief:

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

Before *Mr. James A. Purcell*, trial examiner.

Mr. Maurice C. Pearce and *Mr. William M. King* for the Commission.

Thompson, Hine & Flory, of Cleveland, Ohio, for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, The Climax Cleaner Manufacturing Co., is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2080 West 110th Street, Cleveland, State of Ohio.

PAR. 2. Respondent is now and for many years last past has been engaged in the sale and distribution of a product designated "Climax

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Wall Paper Cleaner." Respondent causes and has caused its said product when sold to be transported from its place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio and in the District of Columbia.

Respondent now maintains and at all times herein mentioned 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 business and for the purpose of inducing the purchase of its product, the respondent has made false and misleading statements and representations with respect to its said product by means of radio continuities, postal cards, window and counter display cards and other advertising matter broadcast and distributed to and among prospective purchasers, and on labels on the container in which said product is sold and distributed. Among and typical of such false and misleading statements and representations are the following:

CLIMAX WALL PAPER CLEANER

Non-Crumbling

This is the New and Improved

Crumble-less

CLIMAX

the new, improved, non-crumbling Climax Wall paper Cleaner * * * Ask for Climax Crumble-less Wall Paper Cleaner—It cleans cleaner and makes no muss to sweep up.

Improved Climax Crumble-less Wall Paper Cleaner is non-crumbling. * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, and particularly through the use of the terms "Non-Crumbling" and "Crumble-less," respondent represents that its said product "Climax Wall Paper Cleaner" will not and does not crumble when used for cleaning all types of wall paper.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product "Climax Wall Paper Cleaner" will crumble and does crumble when used for cleaning certain types and varieties of wall paper.

PAR. 6. The use by the respondent of the foregoing false and misleading representations and statements with respect to its said

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wall paper cleaner 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 into the purchase of substantial quantities of respondent's product as a result of such mistaken belief so engendered.

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 January 13, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, The Climax Cleaner Manufacturing Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in the form of 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 complaint or in opposition thereto, 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, the proceeding regularly came on for final hearing before the Commission upon 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, The Climax Cleaner Manufacturing Co., is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2080 West 110th Street, Cleveland, State of Ohio.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution of a product designated "Climax Wall Paper Cleaner." Respondent causes and has caused its said product, when sold, to be transported from its place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio and in the District of Columbia.

Respondent now maintains, and at all times herein mentioned 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 business and for the purpose of inducing the purchase of its product, the respondent has made false and misleading statements and representations with respect to its said product, by means of radio continuities, postal cards, window and counter display cards and other advertising matter broadcast and distributed to and among prospective purchasers, and on labels on the container in which said product is sold and distributed. Among and typical of such false and misleading statements and representations are the following:

CLIMAX WALL PAPER CLEANER

Non-Crumbling

This is the New and Improved

Crumble-less

CLIMAX

the new, improved, non-crumbling Climax Wall paper Cleaner * * * Ask for Climax Crumble-less Wall Paper Cleaner—It cleans cleaner and makes no muss to sweep up.

Improved Climax Crumble-less Wall Paper Cleaner is non-crumbling. * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, and particularly through the use of the terms "Non-Crumbling" and "Crumble-less," respondent represents that its said product "Climax Wall Paper Cleaner" will not and does not crumble when used for cleaning all types of wall paper.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product "Climax Wall Paper Cleaner" will crumble and does crumble when used for cleaning certain types and varieties of wall paper.

PAR. 6. The use by the respondent of the foregoing false and misleading representations and statements with respect to its said wall paper cleaner 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 into the purchase of substantial quantities of respondent's product as a result of such mistaken belief so engendered.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal 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 James A. Purcell, a trial examiner of the Commission, theretofore duly designated by it, which testimony consisted of a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record in lieu of testimony in support of the complaint and in opposition thereto, report of the trial examiner upon the evidence, 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, The Climax Cleaner Manufacturing Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of its product designated "Climax Wall Paper Cleaner," or any other product containing the same or similar ingredients, whether sold under the same name or any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that respondent's product will not crumble when used for cleaning all types of wall paper.
2. Using the words "non-crumbling" or "crumble-less" or any other words or combination of words of similar import or meaning to designate or describe a wall paper cleaner which will crumble when used on certain types of wall paper.

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

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IN THE MATTER OF

D. D. D. CORPORATION

MODIFIED ORDER TO CEASE AND DESIST

Docket 3972. Order, July 8, 1942

Modified order, pursuant to provisions of Section 5 (1) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on April 19, 1941, 32 F. T. C. 1227, 1235, and in which Circuit Court of Appeals for the Seventh Circuit, on February 12, 1942, in *D. D. D. Corporation v. Federal Trade Commission*, 125 F. (2d) 679, 34 F. T. C. 1821, rendered its opinion, and on April 4, 1942, issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming same in other particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., of respondent's "D. D. D. Prescription" or any other substantially similar medicinal preparation, to cease and desist from disseminating, etc., any advertisements, etc., as in said order set forth, which represent, directly or through inference, that said prescription is a cure or remedy or has therapeutic value in excess of affording relief from certain symptoms for eczema, pimples, or hives, skin disorders caused by internal or systemic conditions, blotches or rashes when due to such conditions, and athlete's foot, insect bites, and cases of ivy and oak poisoning; or which, through use of words "and other externally caused skin eruptions," etc., imply that certain diseases and conditions which may be of systemic or internal origin are solely of external origin, and that its said preparation has therapeutic value in the treatment thereof regardless of origin; or through use of the words "stops itching," etc., that it will either permanently or temporarily eliminate the disease or condition causing said symptom, or that it has any therapeutic value in excess of that afforded by alleviation thereof, etc., as in order in detail set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on April 19, 1941, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on February 12, 1942, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and on April 4, 1942, issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars:

Now therefore, Pursuant to the provisions of Subsection (i) of Section 5 of the Federal Trade Commission Act, the Commission issues

this, its modified order to cease and desist in conformity with said decree:

It is ordered, That the respondent, D. D. D. 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 medical preparation, D. D. D. Prescription, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(a) That respondent's preparation D. D. D. Prescription is a cure or remedy for eczema, or that it has any therapeutic value in the treatment thereof in excess of affording 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 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 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 alleviation of the symptom of itching, or that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

(f) Through the use of the words "and other externally caused skin eruptions," or other words or phrases of similar import or meaning, in connection with diseases or conditions which may be of a systemic or internal origin, that such diseases and conditions are, in fact, solely of external origin or that respondent's preparation has therapeutic value in the treatment of such diseases and conditions regardless of their origin.

(g) Through the use of the words "stop itching" or other words or 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

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excess of that afforded by the alleviation of the symptom of itching, or that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation D. D. D. Prescription, which advertisement contains any of the representations prohibited in Paragraph 1 hereof and the respective subdivisions thereof.

It is further ordered, That respondent shall within 30 days after the service upon it of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF

HARRY M. BITTERMAN, INC., ET AL.

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

Docket 4229—Complaint, Aug. 8, 1940—Decision, July 8, 1942

Where a corporation, and two individuals—president and director and office manager thereof—engaged in the competitive interstate purchase from numerous manufacturers and other sellers of fur garments for a number of retail establishments—

- (a) Received compensation in the form of brokerage or commissions upon orders from aforesaid buyers for the purchase of commodities including, particularly, fur garments, which it transmitted to and executed with sellers, amounting, customarily, to 5 percent of the sales prices of the goods sold, and while acting as said buyers' agent, buying representative or other intermediary; and

Where aforesaid selling concerns, engaged as above set forth, in the sale of their fur garments in interstate commerce to buyers referred to and to numerous other customers—

- (b) Paid to said corporation and individuals, acting as agents, buying representatives, or other intermediaries of said buyer retailers in the transmittal and execution of their buying orders, compensation in the form of brokerage fees or commissions as above described upon the sales prices of the goods sold by them to aforesaid buyers:

Held, That such receipt and acceptance, and payment of brokerage fees and commissions, as above set forth, constituted a violation of the provisions of Subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondents.

COMPLAINT¹

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful

¹ Complaint is published as amended by a stipulation agreed to by and between respondents named below and W. T. Kelley, chief counsel for the Commission, and approved by the Commission on November 4, 1940, which stipulation amended original complaint, *nunc pro tunc*, as follows:

By striking from the caption of said complaint the words "Arthur Petras, Peter Petras and George Alveras, co-partners doing business under the firm name and style of Petras, Petras & Co." and substituting in lieu thereof the words "Peter Petras and George Alveras, trading as Petras & Alveras, and Arthur Petras, trading as A. Petras & Company," and

By striking from paragraph 3, page 2, of said complaint the words:

"Respondents Arthur Petras, Peter Petras and George Alveras are co-partners doing business under the firm name and style of Petras, Petras & Co. and have their principal

restraints and monopolies, and for other purposes," commonly known as the Clayton Act (U. S. C. Title 15, Sec. 13), as amended by an act of Congress, approved June 19, 1936, commonly known as the Robinson-Patman Act, the Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have been and are now violating the provisions of subsection (c) of Section 2 of said act as amended, issues its complaint against said respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Harry M. Bitterman, Inc. (hereinafter referred to as "Bitterman, Inc.") is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 151 W. Fortieth Street, New York City, N. Y.

PAR. 2. Respondents, Harry M. Bitterman, Herman Bitterman, and Irving Dash, are the president, secretary-treasurer, and office manager, respectively, of the respondent, Bitterman, Inc. Harry M. Bitterman is a director of Bitterman, Inc.

PAR. 3. Respondent, I. and A. Berger, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business at 150 West Thirtieth Street, New York City, N. Y.

Respondent, B. Ordover & Sons, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business at 150 West Thirtieth Street, New York, N. Y.

Respondents, Peter Petras and George Alevras, are individuals, trading as Petras & Alevras, having their principal office and place of business at 115 West Thirtieth Street, New York, N. Y.

Respondent, Arthur Petras, is an individual, trading as A. Petras & Company, having an office and place of business at 249 West Twenty-ninth Street, New York, N. Y.

office and place of business at 249 W. 29th Street, New York City, N. Y." and substituting in lieu thereof the words:

"Respondents Peter Petras and George Alevras are individuals trading as Petras & Alveras, having their principal office and place of business at 115 West 30th Street, New York, N. Y.

"Respondent Arthur Petras is an individual trading as A. Petras & Company, having an office and place of business at 249 W. 29th Street, New York, N. Y."

It is further agreed, By and between the parties aforesaid as follows, to wit:

Said complaint, as amended, shall be deemed and considered to have been lawfully served on the said Peter Petras, George Alevras, and Arthur Petras on the date on which said complaint was served on said individuals originally, to wit: on August 8, 1940.

Morris Minsk is an individual, doing business under his own name, with his principal office and place of business at 352 Seventh Avenue, New York, N. Y.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents."

PAR. 4. On and for many years prior to June 19, 1936, and until on or about January 1, 1938, Harry Bitterman was engaged and from on or about January 1, 1938, Bitterman, Inc., has been and is now engaged in the business of purchasing fur garments for a number of corporations, partnerships, and individuals. These corporations, partnerships, and individuals (hereinafter collectively referred to as "buyers") operate retail establishments in which fur garments and other commodities are sold. Most of these buyers are located and do business in some State other than the State of New York.

Each of said buyers is and for several years last past has been engaged in the business of buying fur garments in interstate commerce from numerous manufacturers and other sellers of such merchandise, including the seller respondents named in paragraph 3 hereof.

PAR. 5. Each of the seller respondents named in paragraph 3 hereof is and for several years last past has been engaged in the business of selling fur garments in interstate commerce to the buyers referred to in paragraph 4 hereof, and to numerous other customers.

Said seller respondents are fairly typical and representative members of a large group or class of fur manufacturers and sellers engaged in selling their fur garments in interstate commerce to the buyers referred to in paragraph 4 hereof and to numerous other customers. The fur garment manufacturers and sellers comprising said group or class are too numerous to be specifically named as respondents herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay. Each of such manufacturers and sellers, in selling to buyers who purchase through Harry Bitterman or Bitterman, Inc., has been and is engaged in practices similar to those hereinafter charged against the seller respondents.

PAR. 6. In the course and conduct of his business aforesaid from June 19, 1936, to on or about January 1, 1938, Harry Bitterman received and, in the course and conduct of its business aforesaid, from on or about January 1, 1938, to the present time, Bitterman, Inc. received and now receives orders from the buyers aforementioned to purchase commodities, particularly fur garments, and transmitted or transmits such orders to and executed or executes the same with the aforesaid seller respondents and other sellers. As a result of

the transmission of said orders by such buyers to Harry M. Bitterman or to Bitterman, Inc., the execution of same by said Harry M. Bitterman or by Bitterman, Inc., at the instance and request of said buyers and the acceptance of some of said orders by said respondent sellers or one or more of them, goods, wares, and merchandise, particularly fur garments, were or are, in the case of each such order, sold or delivered by one or more of said seller respondents to one or more of the said buyers. By such means and in the manner aforesaid, Harry M. Bitterman and Bitterman, Inc., acting for and in behalf of the said buyers, caused or now cause the above named seller respondents to ship the said commodities, particularly fur garments, 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 buyers in the States of their respective locations.

Respondent Bitterman, Inc. carried through and performed the operations and activities referred to through respondents Harry and Herman Bitterman and Irving Dash, its officers and employees.

The estimated annual volume of purchases negotiated by Harry M. Bitterman or by Bitterman, Inc., as aforesaid, for each of the years 1937, 1938, and 1939 from all seller respondents and other sellers has been approximately \$200,000. In all of said transactions Harry M. Bitterman and Bitterman, Inc. and the other respondents herein named as officers and employees of said Bitterman, Inc., and each of them, were acting in fact for or in behalf of the buyers hereinbefore mentioned and were generally rendering to such buyers all of the services that are customarily rendered by a buying agent to and for his principals.

PAR. 7. In the course and conduct of the commerce hereinabove described, the seller respondents paid to Harry M. Bitterman and paid and are now paying to Bitterman, Inc. brokerage fees and commissions, amounting to a certain percentage, customarily 5 percent of the sales prices of the goods sold by seller respondents to buyers and, while acting in fact as intermediary for and in behalf of the buyers in the transmittal and execution of the aforesaid buying orders and otherwise, Harry M. Bitterman received and accepted and, while so acting, Bitterman, Inc. received and accepted and now receives and accepts brokerage fees and commissions from the seller respondents and other sellers.

PAR. 8. The payment by seller respondents of brokerage fees and commissions to Harry M. Bitterman and to Bitterman, Inc., under the circumstances hereinabove set forth, were and are in violation of the provisions of Section 2, subsection (c) of the act described in the

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preamble hereof. The receipt and acceptance from seller respondents and other sellers of said brokerage fees and commissions by Harry M. Bitterman and by Bitterman, Inc., under the circumstances hereinabove set forth, were and are likewise in violation of the terms of said statute.

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 8, 1940, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint each of said respondents except Herman Bitterman, individually, and as secretary-treasurer of Harry M. Bitterman, Inc., 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. Said respondents also waived oral argument and the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the admission answers, 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, Harry M. Bitterman, Inc. (hereinafter referred to as "Bitterman, Inc."), is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 370 Seventh Avenue, New York, N. Y.

PAR. 2. Respondents, Harry M. Bitterman and Irving Dash, are the president and office manager, respectively, of the respondent, Bitterman, Inc., and Harry M. Bitterman is a director of Bitterman, Inc. Respondent, Herman Bitterman, named in the complaint herein individually and as secretary-treasurer of Harry M. Bitterman, Inc., has not actively participated at any time in the conduct of said business.

PAR. 3. Respondent, I. and A. Berger, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York, N. Y.

Respondent, B. Ordovery & Sons, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York, N. Y.

Respondents, Peter Petras and George Alevras, are individuals, trading as Petras & Alevras, and have their principal office and place of business at 115 West Thirtieth Street, New York, N. Y.

Respondent, Arthur Petras, is an individual, trading as A. Petras & Co., having an office and place of business at 249 West Twentyninth Street, New York, N. Y.

Morris Minsk is an individual doing business under his own name, with his principal office and place of business at 352 Seventh Avenue, New York, N. Y.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents."

PAR. 4. On and for many years prior to June 19, 1936, and until on or about January 1, 1938, Harry Bitterman was engaged and from on or about January 1, 1938, Bitterman, Inc., has been and is now engaged in the business of purchasing fur garments for a number of corporations, partnership, and individuals. These corporations, partnerships, and individuals (hereinafter collectively referred to as "buyers") operate retail establishments in which fur garments and other commodities are sold. Most of these buyers are located and do business in some State other than the State of New York.

Each of said buyers is and for several years last past has been engaged in the business of buying fur garments in interstate commerce from numerous manufacturers and other sellers of such merchandise, including the seller respondents named in paragraph 3 hereof.

PAR. 5. Each of the seller respondents named in paragraph 3 hereof is and for several years last past has been engaged in the business of selling fur garments in interstate commerce to the buyers referred to in paragraph 4 hereof, and to numerous other customers.

Said seller respondents are fairly typical and representative members of a large group or class of fur manufacturers and sellers engaged in selling their fur garments in interstate commerce to the buyers referred to in paragraph 4 hereof, and to numerous other customers. The fur garment manufacturers and sellers comprising said group or class are too numerous to be specifically named as respondents

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herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay. Each of such manufacturers and sellers, in selling to buyers who purchase through Harry Bitterman or Bitterman, Inc., has been and is engaged in practices similar to those of the seller respondents specifically named herein.

PAR. 6. In the course and conduct of his business aforesaid, from June 19, 1936, to on or about January 1, 1938, Harry Bitterman received and, in the course and conduct of its business aforesaid, from on or about January 1, 1938, to the present time, Bitterman, Inc., received and now receives orders from the buyers aforementioned to purchase commodities, particularly fur garments, and transmitted or transmits such orders to and executed or executes the same with the aforesaid seller respondents and other sellers. As a result of the transmission of said orders by such buyers to Harry M. Bitterman or to Bitterman, Inc., the execution of same by said Harry M. Bitterman or by Bitterman, Inc., at the instance and request of said buyers and the acceptance of some of said orders by said respondent sellers or one or more of them, goods, wares, and merchandise, particularly fur garments, were or are, in the case of each such order, sold or delivered by one or more of said seller respondents to one or more of the said buyers. By such means and in the manner aforesaid, Harry M. Bitterman and Bitterman, Inc., acting for and in behalf of the said buyers, caused or now cause the above-named seller respondents to ship the said commodities, particularly fur garments, 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 buyers in the States of their respective locations.

Respondent, Bitterman, Inc., carried through and performed the operations and activities referred to through its president and director, Harry Bitterman, and through its office manager, Irving Dash.

The estimated annual volume of purchases negotiated by Harry M. Bitterman or by Bitterman, Inc., as aforesaid, for each of the years 1937, 1938, and 1939, from all seller respondents and other sellers has been approximately \$200,000. In all of said transactions Harry M. Bitterman and Bitterman, Inc., and the respondents herein named, individually, and as officers and employees of said Bitterman, Inc., and each of them, were acting in fact for or in behalf of the buyers hereinbefore mentioned and were generally rendering to such buyers all of the services that are customarily rendered by a buying agent to and for his principals.

PAR. 7. In the course and conduct of the commerce hereinabove described, the seller respondents paid to Harry M. Bitterman and paid and are now paying to Bitterman, Inc., brokerage fees and commis-

sions, amounting to a certain percentage, customarily 5 percent, of the sales prices of the goods sold by seller respondents to buyers and, while acting in fact as intermediary for and in behalf of the buyers in the transmittal and execution of the aforesaid buying orders and otherwise, Harry M. Bitterman received and accepted and, while so acting, Bitterman, Inc., received and accepted and now receives and accepts brokerage fees and commissions from the seller respondents and other sellers.

CONCLUSION

From the aforesaid facts and circumstances the Commission concludes that respondents, Harry M. Bitterman, Inc., a corporation, Harry M. Bitterman, individually and as a president and one of the directors of Harry M. Bitterman, Inc., and Irving Dash, individually and as office manager of Harry M. Bitterman, Inc., are engaged in business in commerce as agents, buying representatives or other intermediaries in the purchase of fur garments and other commodities for operators of retail stores and said respondents purchase such fur garments and other commodities from a large number of competitive sellers. In so placing orders and buying fur garments and other commodities said respondents have acted in fact for, or in behalf or are subject to the direct or indirect control of, the retail dealers for whom the purchases were made and while acting in fact as agent, buying representative, or other intermediary in the aforesaid manner said respondents received compensation in the form of brokerage or commissions from the sellers in violation of the provisions of subsection (c) of Section 2 of "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 Commission further concludes that respondents, I. and A. Berger, Inc., a corporation; B. Ordovery & Sons, Inc., a corporation; Peter Petras and George Alevras, individuals, trading as Petras and Alevras; Arthur Petras, an individual, trading as A. Petras & Company; and Morris Minsk, an individual, engaged in the manufacture and sale in commerce of fur garments and other commodities, have paid and granted compensation in the form of brokerage or commissions to Harry M. Bitterman, Inc., a corporation; Harry M. Bitterman, individually and as president and one of the directors of Harry M. Bitterman, Inc.; and Irving Dash, individually and as office manager of Harry M. Bitterman, Inc., while the said respond-

ents were engaged in business in commerce as agents, buying representatives, or other intermediaries and were acting in fact for or in behalf of or were subject to the direct or indirect control of retail dealers for whom the purchase of fur garments and other commodities were made, in violation of the provisions of subsection (c) of Section 2 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 and the answer filed by each of the respondents named in the caption hereof except Herman Bitterman, individually, and as secretary-treasurer of Harry M. Bitterman, Inc., and the respective answers of said respondents having admitted all material allegations of fact set out in the complaint to be true and having waived all intervening procedure and further hearing as to said facts and the Commission having made its findings as to the facts and conclusion herein that said respondents, Harry M. Bitterman, Inc., a corporation, Harry M. Bitterman, individually and as president and as one of the directors of Harry M. Bitterman, Inc., Irving Dash, individually and as office manager of Harry M. Bitterman, Inc., and I. and A. Berger, Inc., a corporation, B. Ordovery & Sons., Inc., a corporation, Peter Petras and George Alevras, individuals trading as Petras & Alevras, Arthur Petras, an individual trading as A. Petras & Co., and Morris Minsk, an individual, have violated the provisions of subsection (c) of Section 2 of "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 the respondents, Harry M. Bitterman, Inc., a corporation, its officers, agents, and employees; Harry M. Bitterman, individually, and as president, and as one of the directors of Harry M. Bitterman, Inc., his representatives, agents, and employees; and Irving Dash, individually, and as office manager of Harry M. Bitterman, Inc., his representatives, agents, and employees; jointly or severally, directly or indirectly, through any corporate or other device, on or in connection with the purchase of fur garments or other commodities in commerce as commerce is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as a commission, brokerage, or other compensation, or any allowance or

discount in lieu thereof, from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondents' own account, or (b) when such purchases are made by respondents as agents or buying representatives of the purchaser, or (c) when in making such purchases respondents are acting in fact for, or in behalf, or are subject to the direct or indirect control, of the purchaser.

It is further ordered, That respondents, I. and A. Berger, Inc., a corporation, and B. Ordovery & Sons, Inc., a corporation, their officers, agents and employees; Peter Petras and George Alevras, individuals, trading as Petras & Alevras, or under any other name; Arthur Petras, an individual, trading as A. Petras & Co., or under any other name; and Morris Minsk, an individual; their representatives, agents and employees; directly or indirectly, through any corporate or other device, on or in connection with the sale of fur garments or other commodities in commerce as commerce is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Paying or granting directly or indirectly anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, to Harry M. Bitterman, Inc., a corporation, Harry M. Bitterman, individually or as an officer of Harry M. Bitterman, Inc., Irving Dash, individually or as office manager of Harry M. Bitterman, Inc., or to any corporation, partnership, firm, or individual, on or in connection with the sale of fur garments or other commodities (a) when such sales are made to such corporation, partnership, firm, or individual, or (b) when such sales are made through such corporation, partnership, firm, or individual acting as agent or buying representative of the purchaser, or (c) when such corporation, partnership, firm, or individual in making such purchases is acting in fact for or in behalf, or is subject to the direct or indirect control, of the purchaser.

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.

It is further ordered, That for the reasons set out in the findings as to the facts herein that the case growing out of the complaint issued herein be, and the same hereby is, closed as to Herman Bitterman, individually and as secretary-treasurer of Harry M. Bitterman, Inc., 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.

Complaint

IN THE MATTER OF
ISAAC S. DICKLER

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

Docket 4231. Complaint, Aug. 10, 1940—Decision, July 8, 1942

Where an individual, engaged in New York City as commission resident buyer of fur garments for some 17 retailers located in Washington, Baltimore, San Francisco, and elsewhere in the United States, and who advised him as to style, quality and size and the price they wished to pay for garments which they desired him to purchase, for shipment by sellers to them direct, and who, in making such purchases through him from competing sellers in said city, fur garment center of the United States, were in competition with many retailers who maintained buying offices therein—

Received and accepted from the sellers on such purchases a percentage, which was usually five, of the agreed sales price on orders placed by said agent for them, and while he acted as their agent, buying representative or other intermediary:

Held, That such receipt of compensation in the form of commission or otherwise by said individual while acting as aforesaid constituted a violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondent.

COMPLAINT ¹

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of Sec-

¹ Complaint is published as amended, nunc pro tunc, by Commission order approving stipulated amendment of complaint dated June 24, 1942, as follows:

Whereas, In connection with respondent's petition to file substitute answer in which he admitted all the material allegations of fact in the complaint, counsel for respondent entered into a stipulation with counsel for the Commission under date of May 27, 1942, providing that the second paragraph of paragraph 1 of the complaint might be considered to be amended as of the date of issuance of said complaint to read:

"On such orders respondent generally receives from the sellers a commission of 5 percent. When retailers whom this respondent has represented subsequently place orders directly with fur garment manufacturers, the respondent seeks to, and on occasion does, secure commissions from the sellers on such orders."

and the Commission being fully advised in the premises,

Now, therefore, it is ordered, That the amendment stipulated and agreed to between counsel be accepted and approved and the complaint herein be considered as amended accordingly.

tion 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, Isaac S. Dickler, is a commission resident buyer with offices located at 370 Seventh Avenue, New York, N. Y. Said respondent, in the course of his business as a commission resident buyer, acts as buying agent in the purchase of fur garments for and in behalf of approximately seventeen fur garment retailers located in the several States of the United States and in the District of Columbia. The manner of operation of respondent's business is that of receiving from various retail fur stores for whom he acts as agent, requests, orders, or requisitions to purchase fur garments upon general specifications as to size, style, quality and price. When such orders are received by respondent he contacts various fur garment manufacturers and places the order at the most advantageous price from the standpoint of the buyer. Generally the manufacturer ships the fur garments so purchased direct to the retailer-purchaser, although in some instances delivery is arrested to permit inspection of the garments by respondent at respondent's place of business.

On such orders respondent generally receives from the sellers a commission of 5 percent. When retailers whom this respondent has represented subsequently place orders directly with fur garment manufacturers, the respondent seeks to, and on occasion does, secure commissions from the sellers on such orders.

New York City is the center of the fur garment industry in the United States, and fur garment retailers located in States of the United States other than the State of New York undergo expenditure in purchasing fur garments in the New York market. Many of such retail buyers maintain in New York City buying offices. Such buying offices are maintained and the personnel compensated by such retail purchasers and not by the fur garment manufacturers. Retailers purchasing through commission buyers are generally competitively engaged with retailers who purchase through buyers who are compensated by the retailers employing them.

PAR. 2. In the course and conduct of his business, respondent places orders for fur garments with manufacturers located in New York City on behalf of retailers located in Washington, D. C., Baltimore, Md., San Francisco, Calif., and elsewhere throughout the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York, N. Y., into and through various States of the United States to their respective customers.

PAR. 3. In the course of the purchasing transactions by the respondent, as set forth herein, sellers have, since June 19, 1936, transmitted,

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paid, and delivered and do transmit, pay and deliver, to said respondent commissions, the same being a certain percentage of the sales price agreed upon between each of such sellers and the respondent on the orders for merchandise placed by the respondent for his principals; and said respondent since June 19, 1936, has received and accepted, and is receiving and accepting, such commissions on purchases of merchandise by retail buyers in whose behalf said respondent has been and is, in fact, acting.

PAR. 4. The foregoing acts and practices are in violation of subsection (c) of Section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), the Federal Trade Commission on August 10, 1940, issued and subsequently served its complaint in this proceeding upon respondent Isaac S. Dickler, charging him with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission entered its order granting respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. The respondent also waived oral argument and the filing of briefs. 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 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, Isaac S. Dickler, an individual, is a commission resident buyer of fur garments having his office and place of business at 370 Seventh Avenue, New York, N. Y.

PAR. 2. In the course and conduct of his aforesaid business, respondent, acting in behalf of retailers of fur garments located in various States of the United States other than the State of New York, places orders for fur garments with manufacturers of such merchandise located in New York, N. Y. Pursuant to such orders, fur garments

are caused to be transported by said sellers from New York City through and into various States of the United States to the locations of the respective purchasers.

PAR. 3. The center of the fur garment industry in the United States is in New York City and retailers of fur garments located throughout the United States purchase supplies of such merchandise in the New York City market. Respondent's business as a commission resident buyer consists of acting for and in behalf of and as agent for retailers in the purchase of supplies of fur garments from manufacturers thereof in New York City. Respondent has as clients some 17 retailers of fur garments who have their places of business in Washington, D. C., Baltimore, Md., San Francisco, Calif., and elsewhere in the United States. These retailers advise respondent as to the style, quality, and size of fur garments they desire him to purchase for them, and the price they wish to pay. Upon receipt of such requests or orders, respondent calls upon various manufacturers of fur garments in the New York City market, inspects the merchandise they have for sale, and selects for his clients those garments which he considers the most advantageous purchase for them. When orders so placed are filled, the merchandise is shipped by the manufacturer direct to the retail buyer, although in some instances delivery is arrested to permit inspection of the garments by respondent at his place of business. On purchases made as aforesaid, respondent generally receives from the seller a commission of 5 percent. When retailers whom respondent has represented subsequently place orders directly with fur garment manufacturers, the respondent seeks to and on occasion does secure commissions from the sellers.

Many retail dealers maintain buying offices in New York City for the selection and purchase of supplies of merchandise, including fur garments, in the New York City market, and such dealers bear the expense of maintaining and operating buying offices. Retail dealers who purchase through respondent or other commission resident buyers who secure their compensation from the sellers are generally competitively engaged with retail dealers who bear the expense of maintaining and compensating their own buying representatives.

PAR. 4. In the course of the transactions of purchase in commerce as above set forth, respondent since June 19, 1936, while acting as purchasing agent for and in behalf of buyers of such merchandise in the manner described, has received and accepted from the sellers thereof as a brokerage or commission a certain percentage of the sales price agreed upon between each of such sellers and the respondent on orders placed by the respondent for his principals.

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CONCLUSION

From the aforesaid facts and circumstances the Commission concludes that respondent, Isaac S. Dickler, is engaged as agent, buying representative, or other intermediary in the purchase in commerce of fur garments from representative competitive sellers, and has acted in fact for or in behalf of or under the direct or indirect control of the retail dealers for whom such purchases were made. While acting as agent, buying representative, or other intermediary in making purchases as aforesaid, respondent received compensation in the form of commissions or otherwise from competitive sellers from whom purchases of fur garments were made, in violation of the provisions of subsection (c) of Section 2 of "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).

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, Isaac S. Dickler, which answer admits all of the material allegations of fact set forth in said complaint to be true and waives all other intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion herein that said respondent has violated the provisions of "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914 (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 respondent, Isaac S. Dickler, an individual, his agents, employees, and representatives, directly or through any corporate or other device in or in connection with the purchase of furs, fur garments, or other commodities in commerce, as commerce is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission, or other compensation or any allowance or discount in lieu thereof from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondent's own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such

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purchases respondent is acting in fact for or in behalf, or is subject to the direct or indirect control, of the purchaser.

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
DAVID M. WEISS

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

Docket 4240. Complaint, Aug. 17, 1940—Decision, July 8, 1942

Where an individual, engaged in New York City as commission resident buyer of fur garments for some 60 retailers located in Detroit, Mich.; South Bend, Ind.; Memphis, Tenn.; Atlanta, Ga.; and elsewhere in the United States, who advised him generally as to the styles, sizes, and quality of garments desired and the price they wished to pay, and who, in making such purchases through him of sellers competitively engaged in said fur garment center of the United States, were in competition with many retailers who maintained buying offices in said city, or secured the services of expert buyers of furs or "fee" buyers, or sent their own representatives to New York to purchase such garments—

Received and accepted from sellers compensation, amounting to a certain percentage usually of the agreed sales price, on orders placed by him for them, while acting as such retailer buyers' agent, buying representative, or other intermediary:

Held, That such receipt of such compensation by said individual, while acting as aforesaid, constituted a violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, 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 subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, David M. Weiss, is engaged in business as a commission resident buyer of fur garments, having his principal office and place of business located at 370 Seventh Avenue, New York City, N. Y. The respondent acts as agent for the purchase of garments for and in behalf of approximately sixty retail fur outlets hereinafter called client buyers, located in the several States of the United States.

The respondent's operation of his business consists in general of receiving from client buyers requests, orders, or requisitions to purchase fur garments. Such requests advise the general specifications as to the type of garment, size, style, quality, and price. Upon receipt of such requests, orders, or requisitions, he calls upon various fur garment manufacturers, and when satisfactory merchandise is located he places an order for the client buyer at the most advantageous price from the client buyer's standpoint. When such orders are filled the merchandise is shipped by the manufacturer direct to the client buyer, although in some instances delivery is arrested to permit inspection of the garments by respondent at the respondent's place of business. On such orders the respondent generally receives from the seller a commission of 5 percent.

New York City is the center of the fur garment industry in the United States and fur garment retailers located in States of the United States other than the State of New York undergo expenditures in purchasing fur garments in the New York City markets. Many of such retail buyers maintain in New York City buying offices or secure the services of expert buyers of furs known to the trade as "fee" buyers, or they send their own representatives to New York City to purchase such fur garments. Such buying arrangements are maintained and the personnel compensated by such retail purchasers and not by the fur garment manufacturers. Retailers purchasing through commission buyers are generally competitively engaged with retailers who purchase through buyers who are compensated by the retailers employing them.

PAR. 2. In the course and conduct of his business respondent places orders for fur garments with manufacturers located in New York City on behalf of retailers located in Detroit, Mich., South Bend, Ind., Memphis, Tenn., and Atlanta, Ga., and elsewhere throughout the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York City, N. Y., into and through various States of the United States to their respective customers.

PAR. 3. In the course of the purchasing transactions by the respondent, as set forth herein, sellers have, since June 19, 1936, transmitted, paid, and delivered, and do transmit, pay, and deliver, to said respondent commissions, the same being a certain percentage of the sales price agreed upon between each of such sellers and the respondent on the orders for merchandise placed by the respondent for his principals; and said respondent, since June 19, 1936, has received and accepted, and is receiving and accepting, such commissions on purchases

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of merchandise by retail buyers in whose behalf said respondent has been and is, in fact, acting.

PAR. 4. The foregoing acts and practices are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), the Federal Trade Commission on August 17, 1940, issued and subsequently served its complaint in this proceeding upon respondent, David M. Weiss, charging him with violation of the provisions of subsection (c) of Section 2 of said act, as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission entered its order granting respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts. The respondent also waived oral argument and the filing of briefs. 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 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, David M. Weiss, an individual, is a commission resident buyer of fur garments, having his principal office and place of business at 370 Seventh Avenue, New York, N. Y.

PAR. 2. In the course and conduct of his business, respondent, acting in behalf of retailers located in various States of the United States other than the State of New York, places orders for fur garments with manufacturers and wholesalers located in New York, N. Y. Pursuant to such orders, fur garments are caused to be transported by said sellers from New York City through and into various States of the United States to the locations of the respective purchasers.

PAR. 3. The center of the fur garment industry in the United States is in New York City. Retailers of fur garments located throughout the United States purchase supplies of fur garments in the New York

market. Respondent's business as a commission resident buyer consists of acting for and in behalf of retailers of fur garments and as agent for such retailers in the purchase of supplies of fur garments from manufacturers and wholesalers of such garments in New York City. Respondent has as clients some sixty retailers of fur garments, who have their places of business in Detroit, Mich., South Bend, Ind., Memphis, Tenn., Atlanta, Ga., and elsewhere in the United States. These retailers advise respondent of the types of fur garments they wish him to purchase for them, and generally as to the styles, sizes, and quality of garments desired and the price they wish to pay. Upon receipt of such requests or orders, respondent calls upon various manufacturers of fur garments in the New York market, inspects the garments they have for sale, and selects for his clients those garments which he considers the most advantageous purchase for them. When orders so placed are filled, the merchandise is shipped by the manufacturer direct to the retail buyer, although in some instances delivery is arrested to permit inspection of the garments by respondent at his place of business. On purchases made as aforesaid, the respondent generally receives from the seller a commission of 5 percent of the purchase price.

Retailers of fur garments who purchase supplies of such garments in the New York market utilize various means in making their purchases. Many such buyers maintain buying offices in New York City, or secure the services of expert buyers of furs known to the trade as "fee" buyers, or send their own representatives to New York City to purchase fur garments. Buying arrangements of the kind stated are maintained and the personnel compensated by the retail purchasers and not by the fur garment manufacturers. Retailers who bear the cost of purchasing fur garments by maintaining and compensating buying personnel are in competition with retailers who utilize the services of respondent, who is compensated by the sellers.

PAR. 4. In the course of the transactions of purchase negotiated by respondent or in which he assists, sellers have since June 19, 1936, transmitted, paid, and delivered, and do transmit, pay, and deliver commissions on such transactions to said respondent. These commissions are usually in the form of a certain percentage of the sales price agreed upon between each of such sellers and the respondent on orders placed by the respondent for his principals, and the said respondent has received and accepted, and is receiving and accepting, such commissions on purchases of merchandise by retail buyers in whose behalf respondent has been and is in fact acting.

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CONCLUSION

The Commission concludes that respondent, David M. Weiss, is engaged in business in commerce as agent, buying representative, or other intermediary, in or in connection with buying fur garments from competitive sellers for retailers of fur garments, and has acted in fact for or in behalf of, or under the direct or indirect control of, such buyers; and, in the course of such commerce, while acting in fact as agent, buying representative, or other intermediary for the buyer in the purchase of fur garments, has received compensation in the form of commissions or otherwise, from the sellers from whom purchases were made, in violation of the provisions of subsection (c) of Section 2 of "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).

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 David M. Weiss, which answer admits all of the material allegations of the complaint to be true, waives further hearing as to said facts and all other intervening procedure, and the Commission having made its findings as to the facts and conclusion herein that said respondent, David M. Weiss, has violated the provisions of subsection (c) of Section 2 of "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 the respondent, David M. Weiss, an individual, his agents, employees and representatives, directly or through any corporate or other device in or in connection with the purchase of furs, fur garments or other commodities in commerce, as commerce is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission or other compensation or any allowance or discount in lieu thereof from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondent's own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such

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purchases respondent is acting in fact for or in behalf, or is subject to the direct or indirect control, of the purchaser.

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

JACK HERZOG, MICHAEL HERZOG, GEORGE HERZOG
AND LOUIS HERZOG, TRADING AS JACK HERZOG
AND COMPANY

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

Docket 4257. Complaint, Aug. 22, 1940—Decision, July 8, 1942

Where four individuals, engaged in New York City as commission resident buyers of fur garments for some 80 retailers and department stores in the several States, who placed their orders to the amount of \$600,000 to \$800,000 annually with said individuals, together with general specifications as to size, style, quality, and price, and who, in thus making such purchases through said individuals in said fur garment center of the United States, of representative competitive sellers, manufacturers and wholesalers, were themselves in competition with other fur garment retailers and department stores who maintained buying offices, retained the services of fur garment buyers or "fee" buyers, or sent representatives to said city to make fur garment purchases—

Received and accepted from sellers, compensation amounting to a certain percentage, which was usually five, of the agreed sales price on said purchases by said fur garment retailers and department stores whose buying representatives or other intermediaries said individuals in fact were:

Held, That such receipt and acceptance, and payment of brokerage fees and commissions, as above set forth, constituted a violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, are individuals, trading under the name Jack Herzog & Co., with their principal office and place of business located at 337 Seventh Avenue, New York, N. Y. Said respondents

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are engaged in business as commission resident buyers of fur garments. In the course of their said business respondents act as agents for the purchase of fur garments for and in behalf of approximately 80 fur garment retailers and department stores located in the several States of the United States, such purchases aggregating an annual volume of \$600,000 to \$800,000.

The manner of operation of respondents' business consists in receiving from one of said fur garment retailers or department stores orders or requisitions to purchase fur garments upon general specifications as to size, style; quality and price. When such orders are received by respondents they call upon various fur garment manufacturers and place the order at the most advantageous price from the standpoint of the buyer. Generally the manufacturer ships the fur garments so purchased direct to the retailer-purchaser, although in some instances delivery is arrested to permit inspection of the garments by respondents at their place of business.

On such purchase orders respondents generally receive from sellers a commission of 5 per cent. On occasions when retailers whom respondents have represented place orders directly with fur garment manufacturers, respondents seek to, and on occasions do, secure commissions from the sellers on such orders.

New York City is the center of the fur garment industry in the United States and fur garment retailers and department stores located in other States of the United States undergo expenditure of a certain proportion of their total sales volume to cover cost of purchasing fur garments from the New York City fur garment market. In the course and conduct of their business respondents represent fur garment retailers who are in competition with other fur garment retailers who undergo buying expense by maintaining buying offices, retain the services of fur garment buyers known as "fee" buyers, or send representatives to New York City to make fur garment purchases.

PAR. 2. In the course and conduct of their business, respondents place orders for fur garments with many manufacturers located in New York, N. Y., on behalf of retailers located in various States of the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York, N. Y., into and through various States of the United States to their respective customers.

PAR. 3. In the course of the purchasing transactions by the respondents, as set forth in paragraph 1 hereof, said sellers have, since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondents commissions, the same being a certain

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percentage of the sales price agreed upon between each of the said sellers and the respondents on the orders for merchandise placed by the respondents for their principals; and said respondents, since June 19, 1936, have received and accepted and are receiving and accepting such commissions on purchases of merchandise by some 80 fur garment retailers and department stores who are the actual purchasers in such transactions and in whose behalf said respondents have been and are, in fact, acting.

PAR. 4. The foregoing acts and practices are in violation of Subsection (c) of Section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C., Title 15, Sec. 13), the Federal Trade Commission on August 22, 1940, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondents' answer, the Commission entered its order granting respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts. The respondents have also waived oral argument and the filing of briefs.

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 same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, are individuals, trading under the name Jack Herzog & Co., with their principal office and place of business located at 337 Seventh Avenue, New York, N. Y. Said respondents are engaged in the business as commission resident buyers of fur garments. In the course of their said business respondents act as agents for the purchase of fur garments for and in behalf of approximately

80 fur garment retailers and department stores located in the several States of the United States, such purchases aggregating an annual volume of \$600,000 to \$800,000.

The manner of operation of respondents' business consists in receiving from fur garment retailers or department stores, orders or requisitions to purchase fur garments or other commodities upon general specifications as to size, style, quality, and price. When such orders are received by respondents they call upon various fur garment manufacturers and wholesalers and place the order with a manufacturer or wholesaler offering the most advantageous price from the standpoint of the buyer. Generally, the manufacturer or wholesaler ships the fur garments so purchased direct to the retailer-purchaser, although in some instances delivery is arrested to permit inspection of the garments by respondents at their place of business.

On such purchase orders respondents generally receive from sellers a commission of 5 percent. On occasions when retailers whom respondents have previously represented, place orders thereafter directly with fur garment manufacturers or wholesalers, respondents seek to, and on occasions do, secure commissions from the sellers on such orders.

New York City is the center of the fur garment industry in the United States, and fur garment retailers and department stores located in other States of the United States undergo expenditure of a certain proportion of their total sales volume to cover cost of purchasing fur garments from the New York City fur garment market. In the course and conduct of their business respondents represent fur garment retailers who are in competition with other fur garment retailers who undergo buying expense by maintaining buying offices, retain the services of fur garment buyers known as "fee" buyers, or send representatives to New York City to make fur garment purchases.

PAR. 2. In the course and conduct of their business, respondents place orders for fur garments with many manufacturers and wholesalers located in New York, N. Y., on behalf of retailers located in various States of the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York, N. Y., into and through various States of the United States to their respective customers.

PAR. 3. In the course of the aforesaid transactions of purchase sellers have, since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondents, commissions, the same being a certain percentage of the sales price agreed upon between each of the said sellers and the respondents on the orders for merchandise placed by the respondents for their principals; and said respondents have received and accepted and are receiving and accepting

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such commissions on purchases of merchandise by some eighty fur garment retailers and department stores who are the actual purchasers in such transactions and in whose behalf said respondents have been and are, in fact, acting.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes, that the respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, individually, and trading as Jack Herzog & Co., are engaged in business in commerce as agents, buying representatives, or other intermediaries in connection with the buying, from representative competitive sellers, manufacturers, and wholesalers of fur garments for many retail fur outlets or client buyers and have acted in fact for, or in behalf of, or under the direct or indirect control of such buyers in purchasing fur garments from said representative competitive sellers, manufacturers and wholesalers, and that in the course of such commerce and while acting in fact as agents, buying representatives or other intermediaries in connection with the buying of fur garments or other commodities for such purchasers did receive remuneration in the form of commissions or otherwise from such representative competitive sellers, manufacturers, and wholesalers from whom respondents purchased such fur garments for such retail fur outlets or client buyers in violation of the provisions of subsection (c) of Section 2 of "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).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondents, Jack Herzog, Michael Herzog, and Louis Herzog, individually, and trading as Jack Herzog & Co., which answer admits all of the material allegations of the complaint to be true and waives all other intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion herein that said respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, individually, and trading as Jack Herzog and Co., have violated the provisions of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act); as

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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 the respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, individually, and trading as Jack Herzog & Co., or under any other name, jointly or severally, their agents, employees, and representatives, directly or through any corporate or other device in or in connection with the purchasing of furs, fur garments, or other commodities in commerce, as commerce is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission, or other compensation or any allowance or discount in lieu thereof from any seller on or in connection with purchase made from such seller (a) when such purchases are made for respondents' own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such purchases respondents are acting in fact for or in behalf, or are subject to the direct or indirect control, of the purchaser.

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

Complaint

IN THE MATTER OF

CENTRAL BUYING SERVICE, 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

Docket 4259. Complaint, Aug. 22, 1940—Decision, July 8, 1942

Where a corporation, engaged in New York City as resident commission buyer in providing information, facilities, and purchasing services to operators of retail stores or buyers of commodities such as millinery, engaged in resale thereof through retail stores or departments thereof which they operated, and in executing their orders—either following instructions or exercising their own judgment as to details—by transmitting them to seller manufacturers, competitively engaged with other manufacturers and wholesalers, who shipped the goods to the buyer for whose account the purchases were made, and billed him and received payment direct—

Received and accepted from sellers on merchandise purchased by it for and on behalf of aforesaid buyers, and while acting in fact as their agent, buying representative, or other intermediary, commissions varying from 3 to 7 percent of the sales price of the goods thus purchased:

Held, That such receipt and acceptance, and payment of brokerage fees and commissions, as above set forth, constituted a violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, 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 has, since June 19, 1936, violated and is now violating the provisions of subsection (c) Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, c. 592, Section 1, 49 Stat, 1526 (15 U. S. C. A. 13 (c)), hereby issues its complaint:

PARAGRAPH 1. Central Buying Service, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 101 West Thirty-Seventh Street, New York, N. Y.

PAR. 2. Respondent is a resident commission buyer and since the date of its incorporation has been and is now engaged in the business of providing information, facilities, and purchasing services to a number

of individuals, partnerships, and corporations in the purchase of commodities such as millinery. These individuals, partnerships, and corporations operate retail stores or departments of retail stores or otherwise resell such goods. Their places of business are located in various States of the United States and the District of Columbia.

PAR. 3. For many years last past respondent has received and it is now receiving and accepting orders from buyers to purchase for their accounts certain requirements. Following instructions as to number, price, color, fabric, and style contained in each order so received, or if the orders contain no such instructions, then exercising through its officers and employees its own judgment as to such details, respondent executes these said orders by transmitting the same to various manufacturers and purchasing for buyers' accounts the desired merchandise. The millinery or other goods so purchased is selected by respondent from displays made each day in its office by salesmen of various manufacturers or such merchandise is selected from displays made in the showrooms of manufacturers. Occasionally buyers will personally visit the New York market and will call at the office of respondent where they are offered the facilities and buying service of the said respondent. These buyers are advised as to the showrooms maintained by manufacturers and are conducted to these showrooms by an officer or employee of respondent who assists them in selecting and purchasing the desired merchandise.

All orders for the purchase of merchandise, whether such orders are placed by respondent upon orders received through the mail or from selections made by the buyer as above set forth, are made out on forms supplied and provided for that purpose by respondent and delivered to the manufacturers from whom merchandise is so purchased. The manufacturers ship the goods direct to the buyer for whose account such purchases were made, bill the buyer direct, and receive payment direct from the buyer. Respondent makes no charge to and receives no compensation from its clients for the purchasing service rendered and facilities supplied as hereinabove set forth. Respondent at all times has been, and is now acting in fact for and in behalf of such clients.

PAR. 4. In the course and conduct of its business aforesaid, in the manner, method, and form as aforesaid, respondent, acting in fact for and in behalf of buyers, caused and now causes the said manufacturers to ship, and the said manufacturers do ship, commodities so purchased from the State in which said commodity was located at the time of the purchase into and through various other States of the United States and the District of Columbia, directly to the purchasers thereof in the States of their respective location.

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PAR. 5. In the course and conduct of its business, as aforesaid, and while acting in fact for and in behalf of buyers as aforesaid, respondent has, since June 19, 1936, received and accepted and is now receiving and accepting from some sellers a commission on all merchandise purchased from such manufacturers by respondent for and on behalf of buyers as aforesaid. The commission so received and accepted by respondent varies from 3% to 7% of the sales price of the goods so purchased.

PAR. 6. The receipt and acceptance by respondent of commissions from sellers on purchases made from such sellers by respondent, for the account of and while acting in fact for and in behalf of such buyers, in the manner and under the circumstances as hereinabove set forth, is in violation of subsection (c) of Section 2 of the act described in the preamble hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), the Federal Trade Commission on August 22, 1940, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent with violating the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission entered its order granting respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. The respondent has also waived oral argument and the filing of briefs. 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 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. Central Buying Service, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 101 West Thirty-seventh Street, New York, N. Y.

PAR. 2. Respondent is a resident commission buyer and since the date of its incorporation has been and is now engaged in the business of providing information, facilities, and purchasing services to a number of individuals, partnerships, and corporations in the purchase of commodities such as millinery. These individuals, partnerships and corporations operate retail stores or departments of retail stores or otherwise resell such goods. Their places of business are located in various States of the United States and in the District of Columbia.

PAR. 3. For many years last past respondent has received and it is now receiving and accepting orders from buyers to purchase for their accounts certain requirements. Following instructions as to number, price, color, fabric, and style contained in each order so received, or if the orders contain no such instructions, then exercising through its officers and employees its own judgment as to such details, respondent executes these said orders by transmitting the same to various manufacturers and purchasing for buyers' accounts the desired merchandise. The millinery or other goods so purchased is selected by respondent from displays made each day in its office by salesmen of various manufacturers or such merchandise is selected from displays made in the showrooms of manufacturers. Occasionally buyers will personally visit the New York market and will call at the office of respondent, where they are offered the facilities and buying service of the said respondent. These buyers are advised as to the showrooms maintained by manufacturers and are conducted to these showrooms by an officer or employee of respondent who assists them in selecting and purchasing the desired merchandise.

All orders for the purchase of merchandise, whether such orders are placed by respondent upon orders received through the mail or from selections made by the buyer as above set forth, are made out on forms supplied and provided for that purpose by respondent and delivered to the manufacturers from whom merchandise is so purchased. The manufacturers ship the goods direct to the buyer for whose account such purchases were made, bill the buyer direct, and receives payment direct from the buyer. Respondent makes no charge to and receives no compensation from its clients for the purchasing service rendered and facilities supplied as hereinabove set forth. Respondent at all times has been and is now acting in fact for and in behalf of such clients.

PAR. 4. In the course and conduct of its business aforesaid, in the manner, method, and form as aforesaid, respondent, acting in fact for and in behalf of buyers, caused and now causes the said manufacturers to ship, and the said manufacturers do ship, commodities so purchased from the State in which said commodity was located at the time of the

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purchase into and through various other States of the United States and the District of Columbia, directly to the purchasers thereof in the States of their respective location.

PAR. 5. In the course and conduct of its business, as aforesaid, and while acting in fact for and in behalf of buyers as aforesaid, respondent has, since June 19, 1936, received and accepted and is now receiving and accepting from some sellers a commission on all merchandise purchased from such manufacturers by respondent for and on behalf of buyers as aforesaid. The commission so received and accepted by respondent varies from 3 to 7 percent of the sales price of the goods so purchased.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Central Buying Service, Inc., a corporation, is engaged in business in commerce as agent, buying representative, or other intermediary in furnishing trade information, facilities, and purchasing services in buying from representative competitive sellers, manufacturers, and wholesalers of millinery or other commodities for many retail dealers, department stores, and other purchasers; and has acted in fact for, or in behalf of, or under the direct or indirect control of such buyers, in purchasing millinery or other commodities from said competitive sellers, manufacturers, and wholesalers. In the course of such commerce and while acting in fact as agent, buying representative, or other intermediary in connection with the buying of millinery and other commodities for such buyers, respondent received remuneration in the form of commissions or otherwise from such representative competitive sellers, manufacturers, and wholesalers from whom respondent purchased such millinery and other commodities for such retail dealers, department stores, and other purchasers in violation of the provisions of subsection (c) of Section 2 of "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).

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 duly filed by respondent, Central Buying Service, Inc., a

corporation, which answer admits all of the material allegations of fact set forth in said complaint to be true and waives all other intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion herein that respondent, Central Buying Service, Inc., a corporation, has violated the provisions of "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (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 the respondent, Central Buying Service, Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device in or in connection with the purchase of millinery or other commodities in commerce, as commerce is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission, or other compensation, or any allowance or discount in lieu thereof, from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondent's own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such purchases respondent is acting in fact, for or in behalf, or is subject to the direct or indirect control, of 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

IN THE MATTER OF

LAWRENCE W. POWERS, TRADING AS L. W. POWERS CO.

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

Docket 4299, Complaint, Sept. 4 1940—Decision, July 8, 1942

Where an individual, engaged in New York City as commission resident buyer of women's ready-to-wear apparel for a number of retail dealers in various states who advised him of the types, quantities, sizes, colors, and materials of the garments they desired, for shipment to them by sellers direct, and the price they wished to pay, and who, along with others similarly purchasing through said or other commission resident buyers, were competitively engaged with retailers who bear the expense of maintaining buying offices for the selection and purchase of merchandise in said market, center of the women's ready-to-wear apparel industry of the United States—

Received and accepted from sellers competitively engaged commissions amounting usually to 5 percent of the price paid on such purchases, in which said individual acted as agent, buying representative, or other intermediary for said buyers:

Held, That such receipt of compensation in the form of commission on purchases from competitive sellers constituted a violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission,

Mr. Alfred McCormack and *Mr. Harmon Duncombe* of the firm of Cravath, DeGersdorff, Swaine & Wood, 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 subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Lawrence W. Powers, is an individual, trading as L. W. Powers Co., with his principal office and place of business located at 1328 Broadway, New York, N. Y. Respondent is engaged in the business of a commission resident buyer of women's ready-to-wear apparel, and as such, respondent acts as buying agent for, and in behalf of, a number of retail dealers in transactions of purchase and sale of such merchandise.

The manner of operation of respondent's business is that of receiving from various retail dealers for whom he acts as agents, requests, orders, or requisitions to purchase such merchandise upon specifications as to quantity, size, color, kind of cloth, type of garment, and price. When such an order is received by respondent, he contacts various manufacturers of such merchandise and places the order with the source of supply offering the specified requirements on terms and conditions most favorable from the standpoint of the purchaser. Generally the merchandise so purchased is shipped by the manufacturer directly to the purchaser. On the orders so placed by respondent, he receives from the sellers of such merchandise a brokerage fee or commission, usually 5 percent of the purchase price paid by the purchaser.

PAR. 2. New York City is the center of the women's ready-to-wear apparel industry in the United States, and the retail dealers in such merchandise, located in States of the United States other than the State of New York undergo expense in purchasing such merchandise in the New York market. Many of such retail dealers maintain buying offices in New York City, the operating and overhead expenses of which are borne by such retail dealers. Retail dealers purchasing through commission buyers are generally competitively engaged with retail dealers who purchase through buyers who are compensated by the retail dealers employing them and with retail dealers who bear the expense incident to the maintenance of New York buying offices.

PAR. 3. In the course and conduct of his business since June 19, 1936, respondent has placed orders for such merchandise with manufacturers thereof located in the State of New York on behalf of retail dealers located in other States of the United States, pursuant to which orders, such merchandise has been shipped and transported by the sellers thereof from the State of New York across State lines to the respective retail dealer purchasers.

PAR. 4. In the course of the purchasing transactions in interstate commerce as set forth herein, respondent, since June 19, 1936, while acting as purchasing agent for and in behalf of the purchasers of such merchandise in the manner hereinabove described, has received and accepted from the sellers thereof brokerage fees or commissions in substantial amounts.

PAR. 5. The foregoing acts and practices are in violation of subsection (c) of Section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress, entitled "An act to supplement existing laws against unlawful restraints and monop-

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olies 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 September 4, 1940, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission entered its order granting respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. The respondent has also waived oral argument and the filing of briefs. 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 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, Lawrence W. Powers, is an individual, trading as L. W. Powers Co. and having his principal office and place of business at 1328 Broadway, New York, N. Y. Respondent is a commission resident buyer of women's ready-to-wear apparel.

PAR. 2. In the course and conduct of his aforesaid business, while acting in behalf of retail dealers located in various States of the United States other than New York, respondent places orders for women's ready-to-wear apparel with manufacturers of such products located in New York City. Pursuant to such orders, the merchandise so purchased is by said sellers caused to be transported through and into various States of the United States to the locations of the respective purchasers.

PAR. 3. The center of the women's ready-to-wear apparel industry of the United States is in New York City. Retailers located throughout the United States purchase supplies of such merchandise in the New York City market. Respondent's business as a commission resident buyer consists of acting for and in behalf of and as agent for a number of retail dealers in the purchase of women's ready-to-wear apparel from manufacturers thereof located in New York City. These retail dealers who are clients of respondent advise him of the types, quantity, sizes, colors, and materials of the garments desired

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and the price they wish to pay. Upon receipt of such requisitions or orders from his clients, respondent calls on various manufacturers of merchandise of the class ordered, inspects the goods they have for sale, and places the order with the manufacturer from whom the purchase can be made most advantageously from the standpoint of the dealer or dealers he represents. When orders so placed are filled, the merchandise is shipped by the manufacturer directly to the purchasing dealer. On orders placed by respondent as aforesaid, he receives from the seller a commission which usually amounts to 5 per cent of the price paid by the purchaser.

Many retail dealers maintain buying offices in New York City for the selection and purchase of supplies of merchandise in the New York City market, including women's ready-to-wear apparel, and such dealers bear the expense of maintaining and operating buying offices. Retail dealers who purchase through respondent or other commission resident buyers who secure their compensation from the sellers are generally competitively engaged with retail dealers who bear the expense of maintaining and compensating their own buying representatives.

PAR. 4. In the course of the transactions of purchase in commerce as above set forth, respondent since June 19, 1936, while acting as purchasing agent for and in behalf of buyers of such merchandise in the manner described, has received and accepted from the sellers thereof brokerage fees or commissions in substantial amounts.

CONCLUSION

From the aforesaid facts and circumstances the Commission concludes that respondent, Lawrence W. Powers, an individual, trading as L. W. Powers Co., is engaged as agent, buying representative, or other intermediary in the purchase in commerce of women's ready-to-wear apparel from representative competitive sellers, and as has acted in fact for or in behalf of or under the direct or indirect control of the retail dealers for whom such purchases were made. While acting as agent, buying representative, or other intermediary in the purchase of merchandise as aforesaid, respondent received compensation in the form of commissions or otherwise from competitive sellers from whom purchases of merchandise were made, in violation of the provisions of subsection (c) of Section 2 of "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).

Order

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, Lawrence W. Powers, an individual, trading as L. W. Powers Co., which answer admits all of the material allegations of fact set forth in said complaint and waives all other intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion herein that said respondent has violated the provisions of "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (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 respondent, Lawrence W. Powers, an individual, trading as L. W. Powers Co., or under any other name, his agents, employees, and representatives, directly or through any corporate or other device, in or in connection with the purchase of women's ready-to-wear apparel and other commodities in commerce, as commerce is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission or other compensation or any allowance or discount in lieu thereof from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondent's own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such purchases respondent is acting in fact for or in behalf, or is subject to the direct or indirect control, of the purchaser.

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 MILK CAP STATISTICAL 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 4448. Complaint, Jan. 16, 1941—Decision, July 8, 1942

Where an unincorporated trade association, which had been the code authority for the paper disc milk bottle cap industry under the National Industrial Recovery Act and which, following the invalidation of said Act and the manager's suggestion to the members that they should not give up "advantages such as cooperative action and good will" which they had "been able to develop," was continued for the purpose of cooperating in the maintenance of uniform trade practices in the sale and distribution of paper disc bottle caps; and the eleven member-manufacturers of said association or Bureau, engaged in the manufacture and interstate sale of products in question to jobbers and dairies, with a combined business amounting to about 75 percent of that of the entire industry; acting under the supervision and regulation of said Bureau—

(a) Entered into and actively cooperated in agreements and combinations directed to the establishment of uniform prices, discounts, terms and conditions of sale and freight charges, uniform and simultaneous changes of prices, and uniform classifications and rating of customers, in connection with the sale and distribution of paper disc milk bottle caps in commerce; and

Where said "Bureau," in pursuance of such agreements—

(b) Rated and classified the approximately 50,000 dairies located throughout the United States according to the number of caps used annually, and distributed such ratings and classifications among the member-manufacturer who agreed to, and did, adhere thereto in determining prices and discount at which dairies should be sold; and

(c) Confined sale of the products in question exclusively to jobbers and dairy consumers, and prevented sales to "super-jobbers," mill agents, cooperative buying agencies, bottle exchanges, and other consumers; and

Where said manufacturer-members, to make more effective the operation of such agreements—

(d) Filed with said "Bureau" price lists, copies of invoices containing name of purchasers, quantities purchased and prices therefor, customer lists, and copies of contracts and conditions of sale; and

Where said "Bureau"—

(e) Checked data filed by manufacturer-members in accordance with its policy and practice of policing the industry to determine whether said manufacturers carried out said agreements;

With the result that price competition among manufacturers concerned in the sale of paper disc milk bottle caps in commerce was practically eliminated

Held. That such agreements and combinations and things done pursuant thereto under the circumstances set forth, were all to the prejudice of the public had a dangerous tendency to, and did, hinder and prevent price competition among said member manufacturers in the sale of products in question placed in said association and members the power to control and enhance

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prices; unreasonably restrained commerce in said paper disc milk bottle caps; and constituted unfair methods of competition in commerce.

Mr. Daniel J. Murphy for the Commission.

Mr. Joseph J. Brown, of Philadelphia, Pa., for respondents, with the exception of Standard Cap & Seal Corporation, represented by *Sullivan & Cromwell*, of New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly hereinafter 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, The Milk Cap Statistical Bureau, is an unincorporated trade association with its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The said respondent Association was organized prior to 1932, and existed under the name of National Association of Bottle Cap Manufacturers until May 1937, when the name of said respondent Association was changed to The Milk Cap Statistical Bureau. The membership of said respondent Association, hereinafter referred to as the "respondent Bureau," is composed of 11 individuals, firms or corporations engaged in the manufacture, sale and distribution of paper disc milk bottle caps.

The respondent Bureau operates through its officers who consist of a chairman and a manager and an executive committee. The members of the respondent Bureau, at each regular meeting, elect one of the three members, who compose the executive committee, to serve as chairman of the Bureau and chairman of the executive committee until the next regular meeting. The manager of the respondent Bureau is also the executive secretary.

The executive committee of the respondent Bureau consists of:

Respondent, Ray W. Blodgett, President of Mid-West Bottle Cap Co., Belvidere, Ill.

Respondent, George W. Rohrbeck, President of Great Lakes Bottle Cap Co., 2950 West Davison Street, Detroit, Mich.

Respondent, Robert H. Schulz, c/o Piqua Cap Co., 704 Washington Avenue, Piqua, Ohio.

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The manager and executive secretary of the respondent Bureau is respondent, George J. Lincoln, Jr., 1532 Lincoln-Liberty Building, Philadelphia, Pa.

PAR. 2. Respondent, Atlas Paper Box Co., is a corporation organized and existing under the laws of the State of Tennessee and engaged in business under the trade name Atlas Bottle Cap Co., having its principal place of business at 1300 Central Avenue, Chattanooga, Tenn.

Respondent, Great Lakes Bottle Cap Co., is a corporation organized and existing under the laws of the State of Michigan, having its principal place of business at 2950 West Davison Street, Detroit, Mich.

Respondent, Robert S. Leonard Co., is a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at 405 East Eighth Street, Kansas City, Mo.

Respondent, L. Levingston Co., is a corporation organized and existing under the laws of the State of California, having its principal place of business at 383 Fourth Street, San Francisco, Calif.

Respondents, Fowler E. Macy and Edna B. Macy, are copartners doing business under the trade name Fowler E. Macy Co., having a principal place of business in Converse, Ind.

Respondent, Mid-West Bottle Cap Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business in Belvidere, Ill.

Respondent, National Manufacturing Co., is a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at 2800 Mercier Street, Kansas City, Mo.

Respondent, Ohio Bottle Cap Co., is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 411 South College Street, Piqua, Ohio.

Respondent, Piqua Cap Co., is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 704 Washington Avenue, Piqua, Ohio.

Respondent, Sealright Co., Inc., is a corporation organized and existing under the laws of the State of New York having its principal place of business in Fulton, N. Y.

Respondent, Smith-Lee Co., Inc., is a corporation organized and existing under the laws of the State of New York, having its principal place of business in Oneida, N. Y.

Respondent, Standard Cap & Seal Corporation, is a corporation organized and existing under the laws of the State of Virginia,

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having its principal place of business at 1200 Fullerton Avenue, Chicago, Ill.,

Respondents, Atlas Paper Box Co., Great Lakes Bottle Cap Co., Robert S. Leonard Co., L. Levingston Co., Fowler E. Macy and Edna B. Macy, a copartnership doing business under the firm name Fowler E. Macy Co., Mid-West Bottle Cap Co., National Manufacturing Co., Ohio Bottle Cap Co., Piqua Cap Co., Sealright Co., Inc., Smith-Lee Co., Inc., are all respectively respondent members of the respondent Bureau. Said respondent members, together with respondent Standard Cap & Seal Corporation, a nonmember of said respondent Bureau, will hereafter be referred to as respondent manufacturers.

PAR. 3. Respondent manufacturers are all respectively manufacturers of paper disc milk bottle caps and in the regular course and conduct of their respective businesses sell and distribute paper disc milk bottle caps manufactured by them to the purchasers thereof, and in connection with said sales ship and transport, or cause to be shipped and transported, said paper disc milk bottle caps, in commerce, to the purchasers thereof, located in the various States of the United States other than the States of origin of said shipments, and in the District of Columbia. All respondent manufacturers have maintained, and still do maintain, a regular current of trade in paper disc milk bottle caps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent Bureau, and its respondent officers and respondent members of its Executive Committee are not, in their official capacities, engaged in commerce, but all aided, abetted, furthered, cooperated with, and were instrumentalities of, and parties to, some, or all, of the understandings, agreements, combinations, and conspiracies hereinafter set out and actively cooperated and participated in the performance of some or all of the acts and practices done in pursuance thereto and in furtherance thereof.

PAR. 5. There are in the United States approximately 21 individuals, firms, or corporations engaged in the manufacture of paper disc milk bottle caps which are made to fit inside the tops of milk bottles. Eleven of said individuals, firms, or corporations are members of the respondent Bureau and are all named respectively as respondents herein. The total annual sales of paper disc milk bottle caps by the entire industry in the United States amount to approximately 10,000,000,000 caps, the dollar sales of which amount to approximately \$4,500,000. The sales of said caps are made by the said manufacturers to jobbers and dairies. The combined business of the 11 members, respondents

herein, of respondent Bureau, amounts to about 75 percent of the total business of the entire industry.

PAR. 6. Respondent manufacturers in the regular course and conduct of their respective business have been and are in active and substantial competition with each other and with other manufacturers and sellers of paper disc milk bottle caps in the sale thereof to purchasers for shipment in commerce between and among the several States of the United States and in the District of Columbia, except to the extent to which such competition has been restrained, lessened, injured, and suppressed by the understandings, agreements, combinations, and conspiracies hereinafter set forth.

PAR. 7. Respondents, namely said Bureau, hereinabove described, its officers, members, and its executive committee and its members, named and included as respondents herein, and respondent, Standard Cap & Seal Corporation, during and in the period of more than 3 years last past have entered into and thereafter carried out understandings, agreements, combinations, and conspiracies, for the purpose of restricting, restraining, suppressing, and eliminating competition and creating a monopoly in the sale of paper disc milk bottle caps in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 8. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, the said respondents have engaged in and performed and are now engaging in and performing the following acts and practices:

1. Respondent manufacturers have agreed to fix and have fixed minimum prices for the sale of paper disc milk bottle caps sold and distributed by them.

2. Respondent manufacturers have agreed to maintain and have maintained uniform prices for the sale of paper disc milk bottle caps sold and distributed by them.

3. Respondent manufacturers have agreed to fix and maintain and have fixed and maintained uniform discounts and other conditions for the sale of paper disc milk bottle caps sold and distributed by them.

4. Respondent manufacturers have agreed to fix and maintain and have fixed and maintained, with dairies, uniform contract terms which provided for the dairies' actual yearly requirements of paper disc milk bottle caps to be sold to said dairies and delivered thereto, in accordance with their needs, at different times of the year, at a price dependent upon the quantity contracted for.

5. Respondent manufacturers agreed to furnish and have furnished the respondent Bureau with lists of dairies under contract with them.

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said respondent manufacturers for the sale and delivery of paper disc milk bottle caps.

6. Respondent Bureau from time to time issued a "Jobber Rating Book," for the use of said respondent manufacturers which classified and rated all jobbers of paper disc milk bottle caps who purchased 350,000 or more of such caps annually.

7. Respondent manufacturers agreed to abide by and did abide by said "Jobber Rating Books" in determining prices and discounts to be allowed jobbers of paper disc milk bottle caps.

8. Respondent Bureau from time to time issued a "Dairy Rating Book," and supplements thereto, which classified and rated the approximately 50,000 dairies located throughout the United States, e. g.: "A" rated dairy uses 25,000,000 or more paper disc milk bottle caps annually.

"B" rated dairy uses 12,000,000 to 25,000,000 paper disc milk bottle caps annually.

"C" rated dairy uses from 5,000,000 to 12,000,000 paper disc milk bottle caps annually, etc.

9. Respondent manufacturers agreed to abide and did abide by said "Dairy Rating Books" in determining the prices at which a dairy would be sold; sales were made by the respondent manufacturers to dairies at an agreed price based upon the quantity listed for such customer in the dairy rationing book and sales were not made by respondent manufacturers to dairies at a price based upon a greater quantity than the quantity listed for such customer in the dairy rating book.

10. Respondent manufacturers agreed to furnish and have furnished the respondent Bureau with copies of all invoices covering the sales of paper disc milk bottle caps; each invoice to contain the name of the purchaser, the quantity sold, and the price.

11. Respondent manufacturers have agreed to change, and, have changed, simultaneously, the prices and discounts at which respondent manufacturers sell paper disc milk bottle caps.

12. Respondent manufacturers, in the event of a price advance, agreed that each respondent manufacturer would have the privilege of shipping customers under contract the same number of paper disc milk bottle caps in the succeeding 2 months as that customer purchased from the same respondent manufacturer in the prior 2 months at the prior price.

13. Respondent manufacturers agreed to furnish and did furnish the respondent Bureau, at the time of each price advance, their lists of customers under contract with them and records showing the quan-

tity of paper disc milk bottle caps which had been shipped to such customer in the prior 60 days.

14. Said respondents have used, and are now using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of paper disc milk bottle caps in said commerce.

PAR. 9. Each of the said respondents herein acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 10. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among respondents in the sale of paper disc milk bottle caps in commerce within the intent and meaning of the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade and commerce in said products in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly, in the sale of said products in said commerce; of placing in respondents the power to control and enhance prices; of unreasonably restraining such commerce in said products.

Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 16th day of January 1941, issued its complaint in this proceeding against the respondents named in the above caption and caused such complaint to be served as required by law, charging the respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. On February 25, 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, excepting respondent, Standard Cap & Seal Corporation, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission may be taken as the facts in this proceeding and in lieu of

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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, excepting in respect to respondent Standard Cap & Seal Corporation, without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Milk Cap Statistical Bureau, is an unincorporated trade association with its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The said respondent Association was organized prior to 1932, and existed under the name of National Association of Bottle Cap Manufacturers until May 1937 when the name of said respondent Association was changed to The Milk Cap Statistical Bureau. The membership of said respondent Association, hereinafter referred to as the "respondent Bureau," is composed of eleven individuals, firms, or corporations engaged in the manufacture, sale, and distribution of paper disc milk bottle caps.

The respondent Bureau operates through its officers who consist of a chairman and a manager and an executive committee. The members of the respondent Bureau, at each regular meeting, elect one of the three members, who compose the executive committee, to serve as chairman of the Bureau and chairman of the executive committee until the next regular meeting. The manager of the respondent Bureau is also the executive secretary.

The executive committee of the respondent Bureau consists of:

Respondent, Ray W. Blodgett, president of Mid-West Bottle Cap Co., Belvidere, Ill.

Respondent, George W. Rohrbeck, president of Great Lakes Bottle Cap Co., 2950 West Davison Street, Detroit, Mich.

Respondent, Robert H. Schulz, c/o Piqua Cap Co., 704 Washington Avenue, Piqua, Ohio.

The manager and executive secretary of the respondent Bureau is respondent, George J. Lincoln, Jr., 1532 Lincoln-Liberty Building, Philadelphia, Pa.

PAR. 2. Respondent, Atlas Paper Box Co., is a corporation organized and existing under the laws of the State of Tennessee and engaged in business under the trade name Atlas Bottle Cap Co., having its principal place of business at 1300 Central Avenue, Chattanooga, Tenn.

Respondent, Great Lakes Bottle Cap Co., is a corporation organized and existing under the laws of the State of Michigan having its principal place of business at 2950 West Davison Street, Detroit, Mich.

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Respondent, Standard Cap & Seal Corporation, is a corporation organized and existing under the laws of the State of Virginia, having its principal place of business at 1200 Fullerton Avenue, Chicago, Ill.

Respondents, Atlas Paper Box Co., Great Lakes Bottle Cap Co., Robert S. Leonard Co., L. Levingston Co., Fowler E. Macy and Edna B. Macy, a copartnership doing business under the firm name Fowler E. Macy Co., Mid-West Bottle Cap Co., National Manufactur-

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ing Co., Ohio Bottle Cap Co., Piqua Cap Co., Sealright Co., Inc., Smith-Lee Co., Inc., are all respectively respondent members of the respondent Bureau. Said respondent members, together with respondent Standard Cap & Seal Corporation, a nonmember of said respondent Bureau, will hereafter be referred to as respondent manufacturers.

PAR. 3. Respondent manufacturers are all respectively manufacturers of paper disc milk bottle caps and in the regular course and conduct of their respective businesses sell and distribute paper disc milk bottle caps manufactured by them to the purchasers thereof, and in connection with said sales ship and transport, or cause to be shipped and transported, said paper disc milk bottle caps, in commerce, to the purchasers thereof, located in the various States of the United States other than the States of origin of said shipments, and in the District of Columbia. All respondent manufacturers have maintained, and still do maintain, a regular current of trade in paper disc milk bottle caps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. There are a number of different types of coverings used for milk bottles—the flat or disc caps which fit inside the tops of milk bottles and various kinds of closure or hood caps which cover a part or all of the pouring lips of the bottles. The manufacturing of flat or disc paper milk bottle caps is considered as a separate industry from the manufacturing of various types of closure or hood caps.

PAR. 5. There are in the United States approximately 21 individuals, firms, or corporations engaged in the manufacture of paper disc milk bottle caps which are made to fit inside the tops of milk bottles. Eleven of said individuals, firms, or corporations are members of the respondent Bureau and are all named respectively as respondents herein. The total annual sales of paper disc milk bottle caps by the entire industry in the United States amount to approximately 10,000,000,000 caps, the dollar sales of which amount to approximately \$4,500,000. The sales of said caps are made by the said manufacturers to jobbers and dairies. The combined business of the 11 members, respondents herein, of respondent Bureau, amounts to about 75 percent of the total business of the entire industry.

PAR. 6. Approximately 99 percent of all the disc caps sold are special brand caps. The remaining 1 percent are stock print caps or caps which do not have the names of dairies printed on them. The methods of selling, including published prices, terms, and other conditions of sale, are practically the same for all of the companies in the industry. Practically all of the manufacturers sell to jobbers and

dairies. The dairies enter into contracts with the manufacturers for a certain quantity of a specified kind of cap to be delivered during the year as needed by the dairies. It has been a custom of long standing in the industry for manufacturers to allow lower prices for greater quantities contracted for.

PAR. 7. Respondent Bureau was the code authority for the paper disc milk bottle cap industry when the National Recovery Act was in force. After the National Recovery Act was declared unconstitutional on May 28, 1935, the manager of said respondent Bureau advised the industry in a memorandum that they should not "give up a lot of the advantages such as cooperative action and good will which the members have been able to develop." The following excerpt is taken from said memorandum:

There is no Law against, and in fact there is a law supporting the Trade Practice of publishing a price and selling in accordance with that published price. It is also proper that you should continue to file copies of your invoices which represent past transactions, and continue the statistical reports that we have been doing, except as to the Labor Reports.

PAR. 8. At a meeting on June 7, 1935, called by the respondent manager of the respondent Bureau, the members of the industry agreed that they would continue to cooperate in the maintenance and observance of trade practices in the sale and distribution of paper disc milk bottle caps.

PAR. 9. From 1935 up to the time of the institution of these proceedings in January 1941 the members of the industry under the supervision and regulation of the respondent Bureau and its officers have actively and consistently cooperated in the establishment and maintenance of uniform prices, uniform discounts, uniform terms and conditions of sale, uniform contracts, uniform and simultaneous changes of prices, and uniform classifications and ratings of customers in connection with the sale and distribution of paper disc milk bottle caps.

PAR. 10. There have been only four industry price changes since August 1933. The said price changes were made effective on December 20, 1935, on February 1, 1937, on November 17, 1937, and on April 6, 1938. These price changes were uniform and simultaneous as affecting the sale of paper disc milk bottle caps by the members of the industry.

PAR. 11. One week prior to the effective date of the industry price change on December 20, 1935, the respondent manager of the respondent Bureau in a memorandum to the respondent manufacturers announced several agreed changes in Trade Practices in relation to discounts and classification of customers. The following excerpt is quoted from said memorandum:

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The new price list has been worked out with great thought and care. You can advise your Jobber that on the actual operation of the Jobber's business his gross profit on the new basis is within $\frac{1}{4}$ of 1% of what it formerly was, taking into consideration the trade discounts and everything.

PAR. 12. A week following the effective date of said industry price change on December 20, 1935, the respondent manager of the respondent Bureau in another communication to respondent manufacturers stated in part as follows:

* * * In the recent changes made December 20, 1935, there are certain points that we would like to clarify so that they will be interpreted by all the manufacturers in the same manner.

In the consumer's price list the customers buying up to and including one million caps either pay the same price or a lower price, and in this case the consumers are given the benefit of the decrease immediately, which is in accordance with your contract terms. Consumers purchasing 350M and less per year on contract, the prices were raised. In accordance with your contract terms, these customers are given a protection of 90 days for the same quantity of caps that they purchased in the prior 90 days at the old price. In effect this means that the old prices are to be invoiced up to March 20, 1936.

PAR. 13. On February 1, 1937, the effective date of the second above referred to industry price change, the following memorandum was forwarded by the respondent manager of the respondent Bureau to the respondent manufacturers:

In connection with the New Bottle Cap prices filed by a manufacturer, effective February 1, 1937, please note the following points:

1. Do not publish National Buyer or carload lists.
2. Standard packing is a fibre or corrugated case of 25M caps. Wooden cases holding 50M caps take a 1¢ M upcharge.
3. There will be no contracts on stock caps but these will be sold at 3¢ M less than the same quantity special prints.
4. Minimum printing to secure contract price 25M caps.
5. The new price lists are effective February 1, 1937, subject to the new Trade Practice on contracts. (See Memorandum No. 359, dated December 29, 1936, attached. Your attention is particularly called to the third paragraph regarding lists.)

6. *Important.*—There are no longer any Preferred Jobbers. The old 1¢ M Preferred Jobber Discount has been taken into consideration on the new Jobber price list. We think that to avoid misunderstanding you should cover this with your jobbers and we suggest you send a bulletin at once to each one on your books.

PAR. 14. A day prior to November 17, 1937, the effective date of the third above referred to industry price change, the respondent manager of the respondent Bureau in a memorandum to the respondent manufacturers reminded the said manufacturers of the approved Trade Practice, which was effective since December 1936, that in the event of a price advance, each respondent manufacturer could sell to any of its contract customers the same number of caps in the next 60 days

at the same price as was sold such customers in the 60 days prior to the price advance.

The memorandum in part was as follows:

In order to do this in an orderly way, we ask that you list your contracts with the records that you have of quantities due them, send them to the office of the Statistical Bureau so that they may be checked with our records, and also keep on file to check shipments against them in accordance with your contract terms. This must be done immediately not only for your own records, but for ours, and we ask that you send us this data without delay.

PAR. 15. On the effective date, to wit November 17, 1937, of the said third industry price change a memorandum from the respondent manager to the respondent manufacturers stated as follows:

We are enclosing herewith new price lists #34 and #34-A published by Sealright Co., Inc., Fulton, N. Y.

We would appreciate your notifying us if you will file your prices in accordance with these, sending us about twenty-five (25) copies of your new price list.

PAR. 16. On April 5, 1938, the day before the effective date of the fourth and last above referred to industry price change, a resolution was adopted at a meeting of the members of the respondent Bureau terminating a special assessment of 1 cent per thousand bottle caps theretofore levied against the members as a contribution to the National Dairy Council.

PAR. 17. From time to time the respondent members of the respondent Bureau communicated, by letter and by telephone, with the authorized officials of the respondent Bureau relative to prices, discounts, and other terms of sale of paper disc milk bottle caps. A member would desire and seek information from the respondent Bureau as to whether "any change was to be made in the current price structure in the near future."

PAR. 18. The respondent members of the respondent Bureau entered into mutual agreements as to identical contract terms and other conditions in the sale of paper disc milk bottle caps. Contracts were entered into with dairies for a year's supply of caps to be delivered at different times during the year as needed by the dairy. The price paid by the dairies was dependent upon the quantity contracted for rather than upon the quantity of each printing. The contract terms and other conditions of sale for all of the respondent members were substantially the same. Some of the agreed contract order terms included the following:

The seller will not be obligated to supply a larger quantity of milk bottle caps than is contracted for.

In the event of price decline, the purchaser will receive immediate benefit of the lower prices applicable to the quantity contracted for.

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Any contract against which no shipments have been made over a period of three months from the effective date thereof will become null and void.

A contract becomes effective on date of first shipment provided shipments start within 60 days after the contract is written. Otherwise effective date is 60 days after the date the contract is written.

Small printings. Items of less than 25 M caps of a printing will be billed at list prices for quantities so ordered. Miscellaneous printing of less than 25 M may not be combined for the purchaser to gain the contract price.

Terms of payment. The condition of this contract is that seller's regular terms of payment be observed by purchaser; otherwise, seller shall have the privilege of treating each quantity shipped as a separate order and to collect for the same at his regular published price list.

No contract shall be accepted for a greater quantity of disc milk bottle caps than is given in the official rating book of the industry or subsequent revisions.

Any situation not specifically covered by this agreement will be treated in accordance with seller's normal practice as set forth in his regular published price list.

PAR. 19. The respondent members at the meetings of the respondent Bureau discussed, agreed upon and made effective various Trade Practices such as:

(a) The members would not accept contracts from dairies using less than 100,000 caps per year.

(b) The members would strictly adhere to the practice of not accepting or shipping any orders at contract prices without actually having a contract from the customer.

(c) The members, at the time of a price advance, would forward to the Bureau their lists of contract customers with the quantity of caps their records show had been shipped in the prior 60 days for checking and approval by the Bureau.

(d) The members could not sell to super-jobbers or mill agents or consumers.

(e) The members would not recognize cooperative buying.

(f) The members could not sell to bottle exchanges.

(g) The sale of stock printed caps shall be governed by the same classifications as special printed caps and all the Trade Practices governing special printed caps will include stock printed caps.

PAR. 20. Several other Trade Practices in reference to prices mutually and concertedly agreed upon by the respondent manufacturers are noted in the following excerpts taken from official memoranda and bulletins issued by the respondent Bureau to the respondent manufacturers:

1. Combination pull and straw drink cap—1 cent up charge.
2. Straw drink cap only—2 cents less than pull cap with staple.
3. Flat cap—0.04 less than regular pull cap.
4. Stock print cap—2 cents less than special print.
5. Plain cap (no printing)—4 cents less than special print.

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6. Tinted board—1 cent higher than list price.
7. Snow white board—1 cent higher than list prices (single lined).
8. Snow white board—2 cents higher than list prices (double lined).
9. Electrotpe charges—same as previous.
10. Prices on other than No. 2 size milk cap—same as before.
11. Sour cream—cottage cheese—electrotypes—same as previous.
12. Milk can caps—changed—see enclosed list.
13. Full freight allowed everywhere—actual weight times actual rate.
14. Packing of caps—same—price differentials same.
15. Contract terms—will be the same except for the following changes:
The paragraph dealing with PRICE ADVANCE will be changed as follows:
"All orders for future delivery will be billed at the effective price as of date of shipment—in cases of price advance, buyer may have the option of cancelling balance of contract."
- The paragraph in regard to ELECTROTYPE CHARGES will be changed as follows:
"The purchaser will be charged for electrotpe plates under the terms and conditions set forth in our price lists current at time of shipment."
16. MISPRINT PRICES—10 cents per 1,000 f. o. b. plant (memorandum December 14, 1935).
17. The next procedure that we request is that no manufacturer quote or grant any dairy a special price without taking it up with this office to see what the present competitive situation is. The effect of this will be that every manufacturer can, if he so wants to, be competitive on any account but no manufacturer need make the situation worse than it is. This is important and I am going to ask that you give this matter your immediate attention and strictly adhere to the practice of communicating with this office *prior* to quoting anything different than your *published* price in this market (memorandum, February 15, 1936).

PAR. 21. Additional excerpts taken from numerous memoranda and bulletins issued by the respondent Bureau and showing further concerted efforts of the respondents in the matter of prices, discounts, terms of sale and classification of customers in connection with the sale of paper disc milk bottle caps are as follows:

In the consumer's price list the customers buying up to and including one million caps either pay the same price or a lower price, and in this case the consumers are given the benefit of the decrease immediately, which is in accordance with your contract terms. Consumers purchasing 350 M and less per year on contract, the prices were raised. In accordance with your contract terms, these customers are given a protection of 90 days for the same quantity of caps that they purchased in the prior 90 days at the old price. In effect this means that the old prices are to be invoiced up to March 20, 1936 (memorandum, December 26, 1935).

Several manufacturers have notified the Association Office that all their billings to jobbers since December 20, 1935, take the new jobber prices and are subject to the new jobber terms. The 6 percent and 4 percent cash discounts have been withdrawn, and all billings are subject to the new 2 percent cash discount only.

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In other words, the jobber bills consumers at the old prices for 90 days or until the contract expires, whichever happens first, while he receives billings from the manufacturer at the new jobber prices and terms.

New contracts are taken at the new prices and terms.

We are sending this memorandum to you in duplicate and if it meets with your approval, we ask that you sign one copy and return to us so that we may know that you accept the above suggestion and that you will function in the above manner. We ask that you do this promptly because it is important for the reason that if all members do not approve of the suggestion, we will have to notify all other members of the Industry so that they may be guided accordingly (memorandum, December 31, 1935).

Another point has arisen in our new price structure that we think needs clarifying.

Our present Trade Practice is that all National Buyers must be sold and billed direct. This Trade Practice includes 5 and 10 M printings, even though they are not subject to contract and contract prices. This means that all caps, no matter what size printing, are sold and billed direct to National Buyers, the 5 and 10 M being invoiced at your published consumer's price for the quantity ordered.

In regard to the commission that may be paid jobbers, this commission is 1 cent per M on all caps, irrespective of the size of the printing. In other words, they receive 1 cent per M on 5 and 10 M printings just the same as they do on larger quantities. While on the subject of this 1 cent per M commission to jobbers, let me remind you that although this is permitted, it is not being generally done, and is, in fact, the rare case.

We will also state that this above Trade Practice has been concurred in by Toledo Bottle Cap Co., Sealright Co., Smith-Lee Co., as well as several other manufacturers (memorandum, January 13, 1936).

You have heard a good deal from me, particularly recently, stating that I do not think our present Trade Practice in selling stock printed caps and blanks is a good one. I am not going to approach this question from a standpoint of cost as much as I am from a standpoint of selling, which means stability in the market.

I think that in the first place there is too much difference in selling price between stock printed caps and special printed caps. This is primarily occasioned by the fact that we have no control over the quantity of contract jobbers have, and when that is the case it very soon develops that the jobbers secured contracts for greater quantities than their purchasing power warrants. The present situation is that any number of jobbers have five million or more quantity contracts when their actual purchases are a fraction of this. This is the major reason for the wide spread between stock printed caps and special printed, but this is accentuated by the 2-cent reduction of stock printed over special printed caps, and a further 2 cents of blanks over special printed caps.

Now the whole stock printed business is, in fact, a small percentage of the total Industry, and the blank cap business is rather insignificant, and I think we are making a mistake in jeopardizing the stability of our whole industry over this division of it. My suggestion is that every manufacturer have an entirely separate sheet for stock printed caps and sell those without contract and on a spot order basis only. I think this suggestion has a good deal of merit because it is a distinct division of our business and certainly very little can be said for our present price list on stock caps, because I doubt if there

is one person in ten in the Industry who can properly figure down the stock printed prices on account of starting with a base that is subject to all kinds of deductions.

Now, my suggestion would have the advantage that if any jobber or customer wanted to know the price on stock printed caps they would just pick up your price list for stock printed caps, and the price would be all figured out for him and it would be definite. However, before sending this price form out or discussing it any more, I would appreciate your comments (memorandum, June 26, 1936).

There are several radical changes that you made in your Trade Practices recently that we think should be emphasized to your jobbers so that they will not be overlooked. We would suggest your handling this with either a special letter or bulletin.

1. *On stock caps.*—The change of Trade Practices emphasizing the fact that there are no longer contracts on stock caps.

2. That there is no longer any 1 cent per M deduction for Preferred Jobbers to which they are accustomed.

3. It should be called to their attention that *blank caps* are now sold at the same price as stock print caps (memorandum, February 5, 1937).

Another Trade Practice on can caps is that stock *print* and *plain* can caps in quantities less than 25,000 carry the same price as *special print* can caps. For quantities of 25,000 and more, deduct 10 cents per thousand from the *special* print price for *stock print* or *plain can caps*. Likewise, there are no contracts for stock print or plain can caps (memorandum, February 5, 1937).

In order to clarify the new Trade Practice in selling Stock Printed Caps, we would like to emphasize the following points:

To define first a Stock Printed Cap, we will state that Stock Printed Caps and Blank Caps are considered one and the same thing, and are subject to identically the same Trade Practices. There is no deduction for Blank Caps over Stock Printed Caps. The points that we want to emphasize are:

1. There are absolutely no Stock Printed Caps sold on a contract. This even prohibits the selling of Stock Printed Caps on Consumers' special print contracts. In order to keep it clear in your mind, just remember that all Stock Printed Caps are sold on a spot order basis.

2. Stock Printed Caps are invoiced for the quantity of the one order for minimum printings of 25 M. This practice is identical with the practice in effect on Special Printed Caps. The following are some illustrations:

(a) *Order for 100 M Stock Printed Caps* Four (4) printings of 25 M each, 100 M price effective—53¢ M.

(b) *Order for 100 M Stock Printed Caps* 25 M printing "Milk" @ 53¢ M. 25 M printing "Cream" @ 53¢ M. Five (5) printings of 10 M each, two colors @ 81¢ M.

The 100 M price is effective for the 25 M printings, and the 10 M price is effective on the 10 M printings (memorandum, February 23, 1937).

We beg to call your attention to the Trade Practice confirmed at the Industry meeting held in Chicago on July 21, 1937.

All export sales made to foreign countries shall be on the basis of consumer's price list C. I. F. port of destination, less 10% export brokerage commission.

If this is not entirely clear to you, kindly write us so that there will be no misunderstanding of the Trade Practice.

We are sending this memorandum to you in duplicate, asking that you keep one copy for your files, and sign the other copy and return to us, so that we will know the matter has had proper attention (memorandum, July 28, 1937).

Supplementing our Memorandum No. 502 regarding Trade Practice for sales on Export Caps, beg to advise that this mentions export sales are to be made on the basis of Consumer's price list, C. I. F. port of destination, less 10% export brokerage commission.

We beg to advise that the above includes Stock Prints the same as Special Prints, as there is no difference on your own present published Consumer's price list (memorandum, August 24, 1937).

The following trade practice supersedes our Memorandum No. 714 of February 24th, 1939, and Memorandum No. 748 of May 9th, 1939, on the same subject. The interpretation of charges on electrotypes, when changing from one size cap to another, from the above date, shall be as follows:

When interchanging from No. 1, 2, 3, and 4 size milk bottle cap to another size, either on Disc Cap or Closure type of cap, there shall be no electrotypes charge; but, when changing from the above sizes of milk bottle caps to the Sour Cream size cap or the Can caps, or from the Sour Cream or the Can Caps to Milk Caps, the published price for the electrotypes charges shall be made.

There has been confusion over the interpretation of this trade practice. We would therefore ask if you would please sign the duplicate copy of this memorandum and return it to our office advising whether or not the above is in accordance with your interpretation. We should appreciate receiving your reply promptly, so that this matter can be clarified (memorandum, May 15, 1939).

We beg to remind you of your trade practice that you do not recognize bottle exchanges as jobbers (memorandum, August 29, 1939).

PAR. 22. That respondent members agreed upon a trade practice on freight allowance in the sale of paper disc milk bottle caps. Officials of the respondent Bureau forwarded the following memorandum on February 17, 1940, in relation to the trade practice of freight allowance:

There seems to be some little confusion on the part of one manufacturer of the interpretation of our trade practice of freight allowance. For this reason we would like to be sure that the trade practice is understood by all.

The trade practice reads that freight allowance is the weight times the rate. The interpretation of this is that the above is the published rail rate and is the maximum freight allowance made. As an illustration, if the caps are shipped by express the difference between the express charges and the above rail allowance would be the expense of the customer. The same holds true if the trucking rate would be higher than the rail rate. In other words, the trade practice is not free transportation at the discretion of the customer no matter what such charges may be.

Now another point that we want to raise is that in no way does the customer ever make a profit on the transportation. If the possible rail allowance should be greater than the actual trucking cost, the customer is allowed only the lower trucking charge.

We think this important enough that we are going to ask that you reply to this memorandum, advising whether or not the above interpretation is in accordance with your own trade practice.

PAR. 23. Shortly after the enactment of the NRA the idea was conceived of rating dairies according to the number of caps used annually. The respondent Bureau undertook the task of collecting data as to the number of caps used annually by dairies and publishing Rating Books.

The first set of such books was published in 1933. The Eleventh edition was published in October 1939. In such books the approximately 50,000 dairies in the United States are rated according to the number of caps they used during the year preceding the issuance of the books. All the respondent manufacturers sent to the respondent Bureau copies of all invoices covering sales of paper disc milk bottle caps. The respondent Bureau maintains a card index for every dairy in the United States and each sale made by a manufacturer is entered on such card. The price, as well as the quantity, is entered on the card. As a dairy's purchases increase or decrease, its rating changes and each month the respondent Bureau issues supplements to the Rating Books. The Rating Books are furnished by the respondent Bureau to its members. It also sells the Rating Book to nonmembers and outsiders at a price of \$50 per set.

PAR. 24. The respondent manufacturers used said Rating Books to ascertain the price at which a particular dairy should be sold and said respondents strictly adhered by agreement to said ratings in determining the prices at which dairies should be sold. The manager and executive secretary of the respondent Bureau and other authorized representatives of the respondent Bureau policed the industry to see that the respondent manufacturers observed and carried out in their sales the ratings of said Rating Books.

The following excerpt is taken from a communication dated October 21, 1936, by Robert S. Leonard, now the president of the respondent, Robert S. Leonard Co.:

* * * we are spending hundreds of dollars ourselves and the cap industry thousands of dollars to furnish Rating Books which are more than 99% correct in the ratings the dairies should have. If these Rating Books are not kept up then jobbers and manufacturers will have no way of telling what price to quote the dairy.

PAR. 25. If a respondent manufacturer sold a customer in accordance with a higher rating than that accorded such customer in the Rating Book, the authorized officials of the respondent Bureau would contact such respondent manufacturer and call the fact to his attention with the request that "you kindly solicit * * * business according to the present listings in the Rating Books."

PAR. 26. The respondent manager in a communication to a respondent manufacturer on August 29, 1939, stated in part as follows:

* * * we check every invoice that comes into this office and challenge those that are not in accordance with the manufacturer's own published price. It may be that there are some irregularities going on, but if there are, we can tell you that they must be from members not reporting to this office.

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PAR. 27. The respondent Bureau rated and clasified the dairies as follows:

"A"—A grade dairy was one that used 25 million or more paper disc milk bottle caps annually.

"B"—B grade dairy was one that used from 12 million to 25 million or more paper disc milk bottle caps annually.

"C"—C grade dairy was one that used from 5 million to 12 million or more paper disc milk bottle caps annually, etc.

PAR. 28. The respondent Bureau also published a Rating Book for jobbers in which jobbers are rated according to whether they purchase annually from 350 M to 1,000 M caps.

The following excerpt was taken from the minutes of a meeting of respondent Bureau held January 21, 1937:

The following Trade Practice was unanimously adopted concerning the selling of Stock Printed Caps; Stock Printed caps shall now be classified identically the same as special-printed caps and all the Trade Practices governing special-printed caps will include stock printed. The basis of selling stock printed caps to jobbers shall be on contract basis in accordance with individual manufacturer's published price, and the individual jobber's official rating. Note: This will require the Statistical Bureau to issue a Rating Book governing purchases for jobbers. The Statistical Bureau will rate all jobbers 350 M and over. All Jobbers less than 350 M will be sold on the spot order basis. This Jobber Rating Book will be kept distinct from the Dairy Rating Book and will be issued only for the confidential use of all manufacturers.

PAR. 29. The Jobber Rating Book was issued and is used by the respondent manufacturers in the sale of stock print caps or caps which do not have any special printing on them which are sold to jobbers for resale to retail stores for customers who use exceptionally small quantities. Mail order houses such as Sears, Roebuck and Montgomery Ward purchase large quantities of stock print caps.

PAR. 30. The industry prices which were uniformly observed by respondent manufacturers during 1940 on standard pull caps No. 2 size for jobbers and dairies are as follows:

	Price per M			
	Jobber's list		Consumer's list	
	One color	Two colors	One color	Two colors
5 M to 10 M.....	\$0.71	\$0.81	\$1.02	\$1.16
10 M to 25 M.....	.59	.62	.83	.87
	One or two colors		One or two colors	
25 M to 50 M.....	0.49		0.66	
50 M to 100 M.....	.46		.61	
100 M to 350 M.....	.45½		.58	
350 M to 1 M M.....	.44½		.55	
1 M M to 5 M M.....	.44		.52	
12 M M to 25 M M.....	.43½		.49	
25 M M to 50 M M.....	.43		.47	
50 M M and over.....	.42½		.44½	

PAR. 31. The respondent manufacturers and some nonmembers of respondent Bureau filed identical prices with the respondent Bureau. Such filing was referred to as "official filing." All of the respondent manufacturers sent copies of each invoice covering the sale of paper disc bottle caps to the respondent Bureau. Each of the member manufacturers also furnishes the Bureau with a list of contract customers.

PAR. 32. Excerpts from official memoranda and bulletins issued by the respondent Bureau relative to the Rating Books are as follows:

At the present time, it is the practice of the Statistical Bureau to send out rating supplements once a month. In order to make their work more accurate and more efficient, we are going to ask that you send us copies of your invoices more promptly than some manufacturers have been accustomed to.

Some manufacturers have been sending us their copies daily. We ask those to continue to do so, but irrespective of what your past performance has been, we ask that you send your invoices to us at least twice a week. We appeal to you for this additional cooperation to help us in our work (memorandum, May 29, 1936).

Every manufacturer is urged to adhere strictly to the existing Trade Practices, with particular emphasis on the observance of the Rating Books and their own filed prices (memorandum, November 16, 1935).

PAR. 33. Price lists filed by the respondent manufacturers with the respondent Bureau were identical; Rating Books were used by the respondent manufacturers in determining the ratings and classifications of jobbers and dairies and ascertaining the prices at which jobbers and dairies should be sold; the respondent manufacturers by so doing practically eliminated price competition among themselves in the sale of paper disc milk bottle caps.

PAR. 34. The Commission finds that the acts and practices hereinabove described, and the circumstances herein set forth, constitute agreements and combinations on the part of the respondents to fix and maintain uniform prices, discounts, contract terms, and other conditions for the sale and distribution, in commerce, of paper disc milk bottle caps. That in pursuance to said agreements and combinations the respondent Bureau and its representatives have rated and classified the approximately 50,000 dairies located throughout the United States according to the number of caps used annually; said ratings and classifications have been distributed among the respondent manufacturers who agreed to adhere, and did adhere, to said ratings in determining prices and discounts at which dairies should be sold. To make more effective the operation and carrying out of said agreements and combinations, the respondent manufacturers filed, with the respondent Bureau, price lists; copies of invoices containing names of purchasers, quantities purchased, and prices there-

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for; customer lists; copies of contracts and conditions of sale. These data filed by the respondent manufacturers were checked by the representatives of the respondent Bureau in accordance with the policy and practice of said Bureau to police the industry and thus to determine whether the respondent manufacturers observed and carried out the aforementioned agreements and combinations. As a result of the effectiveness of the operations of said agreements and combinations, price competition among the respondent manufacturers, in the sale of paper disc milk bottle caps in commerce, was practically eliminated.

PAR. 35. All the respondent manufacturers are members of the respondent Bureau excepting respondent, Standard Cap and Seal Corporation. These proceedings are concerned with paper disc milk bottle caps and not with closure or hood milk bottle caps; the manufacture of paper disc milk bottle caps is considered a separate industry from the manufacture of closure or hood caps. Although the respondent, Standard Cap & Seal Corporation, does manufacture some paper disc milk bottle caps, it is primarily engaged in the manufacture of closure or hood caps. All of the respondent manufacturers herein, excepting respondent, Standard Cap & Seal Corporation, through counsel, assented and were parties to a formal stipulation as to the facts, which stipulation has been approved and entered of record herein. The said stipulation contains admissions of the material allegations of the complaint herein with reference to the acts of the respondent Bureau, its respondent officers and its respondent members in connection with the sale and distribution of paper disc milk bottle caps.

CONCLUSION

The said understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto, and in furtherance thereof, 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 paper disc milk bottle caps in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in paper disc milk bottle caps; 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 re-

spondents, and a stipulation as to the facts entered into between counsel representing all the respondents, excepting Standard Cap & Seal Corporation, and W. T. Kelley, Chief Counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein, excepting Standard Cap & Seal Corporation, 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, The Milk Cap Statistical Bureau; its manager and executive secretary, George J. Lincoln, Jr.; the members of its executive committee, Ray W. Blodgett, George W. Rohrbeck, and Robert H. Schulz; and its members, Atlas Paper Box Co., a corporation; Great Lakes Bottle Cap Co., a corporation; Robert S. Leonard Co., a corporation; L. Levingston, Co., a corporation; Fowler E. Macy and Edna B. Macy, copartners doing business under the firm name Fowler E. Macy Co.; Mid-West Bottle Cap Co., a corporation; National Manufacturing Co., a corporation; Ohio Bottle Cap Co., a corporation; Piqua Cap Co., a corporation; and Sealright Co., Inc., and Smith-Lee Co., Inc., and their agents, representatives, and employees, in connection with the offering for sale, sale and distribution of paper disc milk bottle caps, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, carrying out, or aiding or abetting the carrying out of any agreement, understanding, combination, conspiracy, or concert of action between and among any two or more of said respondents, with or without the cooperation of others not parties hereto, for the purpose or with the capacity, tendency, or effect of restricting, restraining, monopolizing, or eliminating competition, in the sale in commerce of said paper disc milk bottle caps and from doing any of the following acts and practices pursuant thereto:

1. Fixing or maintaining prices for the sale of various types of paper disc milk bottle caps in said commerce.

2. Fixing or maintaining uniform discounts, terms, conditions of sale or freight charges to be observed in the sale of paper disc milk bottle caps in said commerce.

3. Fixing or maintaining uniform quantity prices or price differentials on quantity purchases based upon quantity purchases from all sources as are fixed and determined by jobber rating books or dairy rating books or other similar devices.

4. Consulting, or communicating in any manner, with the respondent Bureau, or any of its officials, for the purpose of obtaining con-

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sent or agreement relative to prices at which paper disc milk bottle caps should be sold.

5. Limiting the number or quantity of paper disc milk bottle caps which jobber customers or dairy customers may contract for, with, or purchase from, the respondent manufacturers.

6. Preventing the sale of paper disc milk bottle caps to so-called "super-jobbers" or mill agents or cooperative buying agencies and confining the sale of such products exclusively to jobbers and dairy consumers.

7. Forwarding, by the respondent manufacturers, to the respondent Bureau, invoices, or copies thereof, showing the details in respect to prices, discounts and terms of sale at which paper disc milk bottle caps are being sold.

8. Compiling, publishing, or distributing a Jobber Rating Book or other similar device, for the use of respondent manufacturers, which rates or classifies jobbers of paper disc milk bottle caps according to the total number of paper disc milk bottle caps purchased annually.

9. Compiling, publishing, or distributing a Dairy Rating Book or other similar device, for the use of respondent manufacturers, which rates or classifies dairies according to the total number of paper disc milk bottle caps used annually, provided, however, that nothing herein contained shall be construed to prevent respondents, or any of them, from compiling, publishing, or distributing for the use of respondent manufacturers and others, such information as to the annual paper disc milk bottle cap requirements of the respective dairies as may enable each manufacturer to check or determine the propriety of any orders or contracts which may be received by it, if and when such information is not used for the purpose or with the effect of establishing corresponding ratings or classifications of dairies, or corresponding price differentials, that are uniform among respondents.

10. Holding and sponsoring meetings of the respondent manufacturers for the discussion and interchange of information relative to prices, discounts, conditions, charges, or terms to be fixed for the sale of paper disc milk bottle caps.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent, Standard Cap & Seal 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

JOHN CARNER, AS OFFICER OF FRETTED INSTRUMENT
MANUFACTURING CORPORATION, ETC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4444. Complaint, Jan. 7, 1941—Decision, July 9, 1942*

Where four officers of a corporation and its successor, engaged in the manufacture and interstate sale and distribution of stringed musical instruments such as guitars and mandolins, which depended upon the wood for their resonance or amplification—

Simulated the cone amplifying device with which amplifying or resonating types of guitars and mandolins are equipped, and which produces a sound from 50 to 85 percent louder than that of an instrument made entirely from wood, through affixing to the top of the body portion of their guitars and mandolins a polished perforated metal disk or plate (and, at one time, through painting the interior of their instruments with aluminum paint which, when seen through the perforations in the disk, had the appearance of the amplifying cone), result of which was to give their instruments a metallic ring, but not to increase the volume or resonance of the tone, as does the cone;

With the result that the average person, on viewing the instrument, could not distinguish between a genuine resonating or amplifying one and one of their said products decorated with a polished perforated metal disk or plate; and with consequence that a number of dealer-customers, by means of advertisements in musical magazines of general circulation, represented that their products were so equipped:

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

Before *Mr. Lewis C. Russell* and *Mr. John L. Hornor*, trial examiners.

Mr. Joseph C. Fehr 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 John Carner, individually and as an officer of Fretted Instrument Manufacturing Corporation and United Guitar Corporation; Morris Brooks, individually and as an officer of Fretted Instrument Manufacturing Corporation; Frank Solvino and Frank Masiello, individually and as officers of United Guitar Corporation; Fretted Instrument Manufacturing Corporation, a corporation; and United Guitar Corporation, a corporation,

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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. Since 1928, various concerns in the United States have manufactured certain stringed instruments, such as guitars and mandolins, containing a resonating or amplifying device consisting of a delicate metal cone capped by a wooden bridge over which the strings are drawn. Stringed instruments equipped with said device produce, when played, a quality of tone different from, more resonant than, and far superior to that produced by stringed instruments not so equipped. A perforated cover plate is affixed to the top of the body portion of the instrument as a protection for the resonating or amplifying device. Since their introduction in or about the year 1928, stringed instruments embodying such resonating or amplifying devices protected by a distinctive perforated plate have attained widespread public recognition and popularity in the stringed instrument industry and among music lovers generally. Such instruments equipped with said amplifying, resonating device are preferred by a substantial number of the purchasing public over instruments not so equipped.

PAR. 2. Respondents, John Carner, Morris Brooks, Frank Solvino and Frank Masiello, are individuals, who are now, and for several years last past have been, engaged in the manufacture and sale of various kinds of musical instruments, including guitars and mandolins, with their principal office and place of business located at 45 Corneilson Avenue, in the city of Jersey City, in the State of New Jersey. Said respondent, John Carner, acting in conjunction and cooperation with said individual respondents, Morris Brooks, Frank Solvino and Frank Masiello, with a view to capitalizing upon and deriving large financial profits from the acknowledged superior quality and excellent reputation of stringed instruments equipped with the metal cone amplifying devices referred to in paragraph 1 hereof, proceeded to manufacture, to advertise and sell, and to place in the hands of various retail dealers for resale, musical instruments, including mandolins and guitars, which simulate in appearance, but do not actually possess the superior resonating or amplifying device consisting of the delicate metal cone capped by a wooden bridge over which strings are drawn, as will be more fully set forth in detail hereinafter. Said individual respondent, John Carner, acting in conjunction with said individual respondent, Morris Brooks, and with a view to obtaining a larger market for the musical instruments manufactured or to be manufactured by them, including instruments simulating, but not actually containing or em-

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bodily said amplifying device, in November 1935, organized a company, which was incorporated, under and by virtue of the laws of the State of New Jersey, under the name of Fretted Instrument Manufacturing Corporation, a corporate respondent herein, with its principal office and place of business located at 45 Corneilson Avenue in the city of Jersey City in the State of New Jersey. Respondent, John Carner, then became and still is the president of said corporate respondent, Fretted Instrument Manufacturing Corporation. Respondent, Morris Brooks, is vice president of said corporate respondent, Fretted Instrument Manufacturing Corporation. Respondent, John Carner, assisted by and acting in conjunction and cooperation with respondent, Morris Brooks, is and has been actively in charge of, and directs and controls, and has directed and controlled, the policies and operations of said corporate respondent, Fretted Instrument Manufacturing Corporation.

Thereafter in June 1939 said respondent, John Carner, organized another company, also incorporated under and by virtue of the laws of the State of New Jersey. This company employs and has employed the name United Guitar Corporation, and is a corporate respondent herein, with its principal office and place of business located at 45 Corneilson Avenue in the city of Jersey City, in the State of New Jersey. Respondent, John Carner, became and has continued to be the president of said corporate respondent, United Guitar Corporation. Respondents, Frank Solvino and Frank Masiello, are respectively secretary and treasurer of said corporate respondent, United Guitar Corporation. Said John Carner, assisted by and acting in conjunction and cooperation with respondents, Frank Solvino and Frank Masiello, is and has been actively in charge of, and directs and controls, and has directed and controlled the policies and operations of said corporate respondent, United Guitar Corporation.

PAR. 3. Respondents are now, and for some time past have been, engaged in manufacturing, offering for sale, and selling stringed instruments, including guitars and mandolins, in commerce between and among the various States of the United States, and in the District of Columbia. Respondents cause said products, when sold, to be transported from their respective places of business in the State of New Jersey to purchasers thereof located in States of the United States other than the State of New Jersey, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said stringed instruments in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of their respective businesses as described in paragraphs 2 and 3 hereof, respondents manufacture or

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have had manufactured for them, offer for sale and sell to the musical trade located in the various States of the United States and in the District of Columbia certain stringed instruments, including guitars and mandolins, having a polished metal disk or plate affixed to the top of the body portion thereof, said disk or plate containing a number of perforations through which can be seen a part of the interior of the body portion, which is so painted or colored that it simulates in appearance the resonating or amplifying devices contained in the stringed instruments referred to in paragraph 1 hereof. The manufacture and sale in commerce, as aforesaid, of such stringed instruments constitutes and has constituted a very substantial part of the entire business of the respondents.

PAR. 5. In soliciting the sale of and in selling their said products, and for the purpose of creating a demand upon the part of the purchasing public for said products, respondents now cause, and for some time past have caused, advertisements and advertising matter to be inserted in music magazines having wide circulation among and between the various States of the United States and in the District of Columbia. Typical of the advertising statements and representations so made by the respondents concerning their said stringed instruments is the following:

\$9.90 List

GUITAR OR MANDOLIN

DISC TOP

MARVELOUS TONE

Supplied by your favorite

jobber. If not write us.

United Guitar Corporation.

In addition to and supplementing, the representations made by the respondents, as aforesaid, a number of dealers through whom said instruments ultimately reach members of the public purchasing them for use, have also advertised respondents' said products. Typical of such statements and representations so made by dealers offering for sale and selling respondents' said products, are the following:

No. 248. The Guitar which has created an all-time sales record; It has outsold all other guitars and continued a "Best Seller." Nickel plated resonator ornament adds resonance to its deep tone and richness to its appearance.

Amplifier Guitar \$6.95. Big value.

Amplifonic Mandolin, Very Good Tone \$6.95.

PAR. 6. Through the use of the perforated disk or plate in the manner hereinbefore described, and through the use of the foregoing

statements and representations regarding said perforated disk, and others similar thereto but not herein set out in detail, and by constructing and finishing the interior of their instruments so as to have them simulate instruments equipped with said amplifying or resonating device, respondents represent and have represented, directly and through implication, to members of the purchasing public that their said stringed instruments are instruments equipped with a resonating or amplifying device as set forth in paragraph 1 hereof, when such is not the fact. Respondents, further, by the use of said perforated disk or plate in the manner aforesaid, place and have placed in the hands of unscrupulous dealers a means or instrumentality by which innocent purchasers may be led to believe that they are acquiring an instrument equipped with a resonating or amplifying device, when such is not the fact.

PAR. 7. The stringed instruments thus manufactured and sold by respondents are of such general design and appearance when the polished metal disks or plates are affixed to the top of the body portion thereof which is painted or colored as set forth in paragraph 4 hereof, that they deceive the purchasing public into believing that respondents' said stringed instruments are equipped with an amplifying or resonating device, such as set forth in paragraph 1 hereof, and because of such erroneous belief, so induced into buying substantial quantities of respondents' said stringed instruments.

PAR. 8. In truth and in fact the stringed instruments manufactured and sold by respondents, as aforesaid, are not and have not been equipped with an amplifying or resonating device, nor is such a device a part of their standard equipment.

PAR. 9. 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 January 7, A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondents, John Carner, individually, and as an officer of Fretted Instrument Manufacturing Corporation and United Guitar Corporation; Morris Brooks, individually, and as an officer of Fretted Instrument Manufacturing Corporation; Frank Solvino and Frank Masiello, individually, and as officers of United Guitar Corporation; Fretted Instrument Manufacturing Corporation, a corporation, and

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United Guitar Corporation, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act.

After issuance of the complaint and the filing of a joint answer by all of the respondents, testimony and other evidence in support of the allegations of the complaint were introduced by Joseph C. Fehr, attorney for the Commission, and testimony and other evidence in opposition to the allegations of the complaint were introduced by Morris Brooks, attorney for the respondents, before duly appointed trial examiners of the Commission, 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. Thereafter, the proceeding regularly came on for final hearing before the Commission, on the complaint, the joint answer thereto, the testimony and other evidence, the report of the trial examiners thereon and exceptions to said report, 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 public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Fretted Instrument Manufacturing Corporation, is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business in Newark, N. J.

Respondent, United Guitar Corporation, is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business in Jersey City, N. J.

Respondent, John Carner, is an individual, and is president of respondent corporations.

Respondent, Morris Brooks, is an individual, and is vice president and treasurer of respondent, Fretted Instrument Manufacturing Corporation.

Respondent, Frank Solvino, is an individual, and is secretary of respondent, United Guitar Corporation.

Respondent, Frank Masiello, is an individual, and is treasurer of United Guitar Corporation.

Respondents, John Carner and Morris Brooks, directed and controlled the policies of respondent, Fretted Instrument Manufacturing Corporation, and respondents, John Carner, Frank Solvino, and Frank Masiello, directed and controlled and now direct and control the policies of respondent, United Guitar Corporation. The indi-

vidual respondents, acting in conjunction and cooperation with each other, inaugurated and carried out the unfair and deceptive acts and practices hereinafter set forth.

PAR. 2. Respondent, Fretted Instrument Manufacturing Corporation, from the date of its incorporation in November 1935 to April 1939 was engaged in manufacturing and selling string musical instruments such as guitars and mandolins. This respondent discontinued manufacturing in April 1939 and since that time has been engaged in liquidating its assets.

Respondent, United Guitar Corporation, from the date of its incorporation in June 1939 has been and now is engaged in the manufacture and sale of string musical instruments, such as guitars and mandolins.

These respondents, during the periods herein mentioned, caused their products when sold, to be transported from their principal place of business in the State of New Jersey to purchasers thereof located in various States of the United States.

PAR. 3. Approximately eight concerns are engaged in manufacturing, selling, and distributing in commerce between and among various States of the United States what are known as amplifying or resonating types of guitars and mandolins. This type of instrument was first placed on the market about the year 1928. These instruments have a virgin aluminum cone which has considerable flatness on top, the lower part of the cone being set into a well of extension of the top board of the instrument, and on the upper part of the flat portion is a bridge upon which the strings are strung. In some instances the cones are inverted. A perforated metal plate on top of the instrument permits the amplifier to act in a diaphragm action and also serves as a protection to the cone. Instruments not equipped with the cone device depend entirely upon the wood for their resonance or amplification; but where the cone device is used the sound is from 50 to 85 percent louder than that of an instrument made entirely of wood.

PAR. 4. Respondent, Fretted Instrument Manufacturing Corporation, about the year 1936, equipped its musical instruments with a genuine cone amplifying device, pursuant to a license granted it by the Schireson Company for the use of its patent; but because of threatened infringement litigation, ceased using the device in the early part of 1937. Respondents, for the purpose of increasing their sales, simulated the genuine amplifying device described in paragraph 3 hereof by affixing to the top of the body portion of their guitars and mandolins a polished, perforated metal disc or plate, and at one time, to further simulate said device, painted the interior of the body of their instruments with aluminum paint, which when seen through the perforations in the disc, had the appearance of the amplifying

cone. This latter practice was discontinued about the time the complaint herein was issued and has not been resumed. The use of the metal disc or plate gives to respondents' instruments a metallic ring, but neither the volume nor resonance of the tone is increased thereby, as is the case when the cone is used. Respondents' musical instruments are not resonating and amplifying instruments as these terms are understood in the musical trade and among music-loving people. These terms, when applied to musical instruments, mean increasing the volume of the tone.

There is a preference on the part of a portion of the purchasing public for guitars and mandolins equipped with the cone amplifying device. The average person, in viewing the instrument, would not be able to distinguish between a genuine resonating or amplifying instrument and one of respondents' instruments decorated with a polished perforated metal disc or plate.

PAR. 5. Respondents, by simulating the amplifying device described in paragraph 3 hereof, have placed in the hands of dealers to whom they have sold their products the means or instrumentality by which the purchasing public may be led to believe that in purchasing respondents' instruments they are acquiring instruments equipped with a resonating or amplifying device, when such is not the fact.

A number of dealers to whom respondents have sold their products have, by means of advertisements placed in musical magazines of general circulation, represented directly or indirectly that respondents' products are equipped with a resonating or amplifying device. Typical of such advertisements are the following:

No. 248. The Guitar which has created an all-time sales record. It has outsold all other guitars and continued a "best seller." Nickel-plated "Resonator" ornament adds resonance to its deep tone and richness to its appearance.

Nickel-plated "Resonator" ornament adds resonance to the tone of this Mandolin and "pep" to its appearance.

Nickel-plated "Resonator" ornament adds resonance to its deep tone.

The melofonic tone disk built on the top of the Guitar is heavily nickel-plated and polished, and produces a tone of greater volume and remarkable quality.

The melofonic Mandolin you see pictured at the right has a sparkling tone of tremendous power * * *. The nickel-plated tone cover helps to produce a brilliant tone.

The melofonic tone disk built on the top of the Guitar is heavily nickel-plated and polished and produces a tone of greater volume and remarkable quality.

A personal memorandum book carried by one of the salesmen of respondent, Fretted Instrument Manufacturing Corporation, concerning one of its guitars, contained among others, the following entry:

New metal 9" resonator top only * * * imitation of amplifying guitar.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners and exceptions thereto, 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 the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Fretted Instrument Manufacturing Corporation, a corporation, United Guitar Corporation, a corporation, their officers, directors, representatives, agents, and employees, respondents, John Carner, individually, and as an officer of respondent corporations; Morris Brooks, individually, and as an officer of respondent, Fretted Instrument Manufacturing Corporation; Frank Solvino and Frank Masiello, individually, and as officers of respondent, United Guitar Corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of guitars and mandolins, or other stringed musical instruments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Simulating genuine resonating or amplifying musical instruments by equipping their products with polished perforated disks or plates.
2. Simulating genuine resonating or amplifying musical instruments by painting the inside of their products with aluminum paint, or treating it in any other manner so as to give it the appearance of being equipped with an aluminum cone.
3. Representing directly or by implication that their products, or any of them, are equipped with a resonating or amplifying device.

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

H. W. LEDERER, AS PRESIDENT OF THE BIBLE INSTITUTE, ETC., ET AL.

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

Docket 4687. Complaint, Jan. 29, 1942—Decision, July 9, 1942

Where the president and principal owner of the common stock of three corporations, engaged in the interstate sale and distribution of (1) Bibles, prayer books and other religious publications, which they had embossed with the names of purchasers by a stamping concern having the same office and principal place of business as themselves, and which, sold by them principally to funeral parlors, were distributed by latter to Sunday School children as a means of advertising; and (2) hand-bag mirrors purchased from a dealer in New York City which they had similarly embossed with names of purchasers, and which, sold by them to such purchasers as cafés, night clubs and banks, were distributed by latter to their own customers—

- (a) Adopted the name of "The Bible Institute, Inc.," for one of said corporations, and "The Bible Institute" for its corporate successor, to deceive the buying public into the belief that they were religious institutions dedicated to the same worthy purposes as the reputable Bible Institutes, thereby permitting them to make wide distribution of their publications at nominal prices, and to conceal the fact that they were corporations formed to buy and sell inexpensive Bibles, prayer books and other religious publications solely for profit; and
- (b) Adopted for aforesaid third corporation the name of "American Plate Glass Co." for the purpose of deceiving the buying public into the belief that it was a manufacturer of glass products, including hand-bag mirrors, thereby enabling it to make lower prices than would be possible otherwise, when in fact it purchased such mirrors from a dealer for resale; and

Where the salesmen and solicitors of said two "Bible Institutes," including its said president—

- (c) Falsely represented, through use of said corporations' deceptive and misleading letterheads and advertising, that said two corporations were religious institutions and identified with the reputable Bible Institutes; that a J. C. MacDonald was "trustee" therefor; and that they furnished free Sunday School distribution of religious publications; and represented falsely also that they were endowed by philanthropic interests which permitted them to make a wide distribution thereof; and

Where the salesmen and solicitors of said third corporation, including its said president, in selling such hand-bag mirrors to the purchasing public—

- (d) Falsely represented, through the use of said "American Plate Glass Co." letterheads and advertising material, that it was a large glass manufacturer with plants and advertising offices in Pittsburgh, Chicago, and New York; and that it had a number of departments and a superintendent named J. C. MacDonald; and represented falsely also that it was affiliated with a large and well-known Pittsburgh plate-glass company, and that it manufactured said mirrors;

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The facts being it had no more than three employees, its salesmen above referred to; did not manufacture, but purchased such mirrors; and its various representations aforesaid were false;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that said representations were true, thereby inducing the purchase of 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.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Karl E. Steinhauer for the Commission.

Mr. Morton Briskin, of Hollywood, Calif., and *Kirkland, Fleming, Green, Martin & Ellis*, of Washington, D. C., for respondents.

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 H. W. Lederer, individually, and as president of The Bible Institute and American Plate Glass Co., respectively, and The Bible Institute, a corporation, and American Plate Glass Co., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it 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, H. W. Lederer, is president and salesman of both respondents, The Bible Institute and American Plate Glass Co., the principal owner of the common capital stock of both of said corporations, and controls the policies and activities of both of said corporations, including the conduct of sales and the character of advertising representations made in connection therewith. Respondent, The Bible Institute, is a New York corporation, and respondent, American Plate Glass Co., is a Delaware corporation, both of said companies having their principal office and place of business located at 224 West Thirty-fourth Street, in the city of New York, State of New York.

PAR. 2. Respondent, H. W. Lederer, through said respondent, The Bible Institute, and respondent, The Bible Institute, are now and for several years last past have been engaged in the sale, transportation and distribution for profit in interstate commerce of cheap editions of Bibles, prayer books, and other religious publications, principally

¹ By order dated May 21, 1942, in response to respondents' motion, as more fully set forth at p. 126 of the findings, The Bible Institute, a Delaware corporation having waived formal amendment and service upon it of the complaint, was added as a party respondent.

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to funeral parlors. Said respondents have said publications embossed with the names of the purchasers by a stamping concern whose office is the same as the one designated as the principal office and place of business of respondent, The Bible Institute, in the city of New York. Said funeral parlors, in turn, distribute the publications to selected Sunday School children as a means of advertising.

PAR. 3. Respondent, H. W. Lederer, through said respondent, American Plate Glass Co., and respondent, American Plate Glass Co., are now and for several years last past have been engaged in the sale, transportation and distribution in interstate commerce of hand-bag mirrors which they purchased from a dealer in New York City for resale to purchasers in the various States, among whom are cafes, night clubs, and banks, which in turn distribute them to their customers as a means of advertising. Said respondents have the names of such purchasers embossed on said hand-bag mirrors by a stamping concern whose office in New York City is the same as the one designated as the principal office and place of business of respondent, American Plate Glass Co.

PAR. 4. In the course and conduct of their businesses, as hereinbefore described, each of the said respondents, The Bible Institute and American Plate Glass Co., employed and utilized the services of approximately three salesmen or solicitors, including said respondent, H. W. Lederer, who canvassed individual prospective customers located in various States of the United States. When orders are received by such solicitors or salesmen, the orders are forwarded to the New York office of the said corporate respondents, and the wares called for therein are then shipped directly to the purchasers throughout the various States from the stock on hand purchased for that purpose by said respondent, H. W. Lederer, for said corporate respondents.

PAR. 5. In order to facilitate and effect the sales of its cheap editions of Bibles, prayer books and other religious publications, the said respondent, H. W. Lederer, adopted the name of The Bible Institute for that respondent for the purpose of deceiving the buying public into the belief that the said The Bible Institute was and is a religious institution dedicated to the same worthy purposes for which the reputable Bible Institute throughout the States were organized, which thereby permitted respondent to make a wide distribution of publications at nominal prices, and to conceal from the said buying public the fact that the said The Bible Institute was merely a corporation formed to buy and sell cheap Bibles, prayer books and other religious publications solely for profit to its customers throughout the various States of the United States.

PAR. 6. In order to facilitate and effect the sales of hand-bag mirrors, respondent, H. W. Lederer, adopted the name of American Plate Glass Co. for that respondent, for the purpose of deceiving the buying public into believing that respondent, American Plate Glass Co., was a manufacturer of glass products, including said hand-bag mirrors, which thereby enabled respondent to make lower prices than would be possible otherwise, and to conceal from said buying public that respondent merely purchased said hand-bag mirrors from a dealer in New York City for resale to purchasers throughout the various States of the United States.

PAR. 7. The salesmen and solicitors of respondent, The Bible Institute, including the respondent, H. W. Lederer, have used the following means and methods in soliciting the sale of and in selling its said publications to the consuming public:

1. Said agents and solicitors have knowingly given the false impression to prospective purchasers, through the use of said respondent's deceptive and misleading name and respondent's deceptive and misleading letterheads and advertising, that the said respondent, The Bible Institute, is a religious institution and is one of the worthy and reputable Bible Institutes located throughout the United States, and that a J. C. MacDonald is "trustee" for said respondent, and that respondent furnishes a free Sunday School distribution of religious publications, whereas, on the contrary, said respondent is not a religious organization, its operations being conducted solely for profit, and it is not identified with any other Bible Institute in the country and is not engaged in any of the worthy causes for which such other Bible Institutes were organized, and it does not have any person named J. C. MacDonald on its pay roll, or at all, and does not have a "trustee," but only uses such title to conceal from the buying public the mercenary character of the business of said respondent, The Bible Institute, and said respondent does not furnish a free distribution of its publications.

2. Said agents and solicitors have falsely represented to prospective purchasers that said respondent, The Bible Institute, is a religious institution; that it is identified with other institutions in various States of the country having the same or a similar name; that it is endowed by philanthropic interests which permit said respondent to make a wider distribution of bibles, prayer books, and other religious publications; whereas, on the contrary, respondent is not a religious institution and is not identified with other institutions throughout the various States having the same or a similar name, and is not endowed by philanthropic interests, or at all.

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PAR. 8. The salesmen and solicitors of respondent, American Plate Glass Co., including the respondent, H. W. Lederer, have used the following means and methods in soliciting the sale of and in selling its hand-bag mirrors to the purchasing public.

1. Said agents and solicitors have knowingly given the false impression to prospective purchasers, through the use of respondent's misleading and deceptive name and respondent's misleading and deceptive letterheads and advertising, that said respondent, American Plate Glass Co., is a large glass manufacturer with plants and advertising offices in Pittsburgh, Chicago, and New York, and that it has a number of departments, and has a superintendent named J. C. MacDonald, whereas, on the contrary, said respondent is not a glass manufacturer and has no plants or departments or advertising offices, and not more than three employees, all of whom are salesmen, including respondent H. W. Lederer, and has no superintendent, and has no J. C. MacDonald.

2. Said agents and solicitors have falsely represented to prospective purchasers that said respondent is affiliated with the large and well known Pittsburgh Glass Co. and that it manufactures the hand-bag mirror which is the only article it sells, whereas, on the contrary, said respondent is not affiliated with said Pittsburgh Glass Co., or any other glass company; and it does not manufacture the hand-bag mirrors which it sells as aforesaid, but merely purchases the same from some dealer in New York City for purposes of resale.

PAR. 9. The acts and practices of the respondents as above alleged, in the course of selling and offering for sale their wares in commerce as hereinabove described, are calculated to have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief, that said false, misleading and deceptive representations are true, thereby inducing the purchase of respondents' wares.

PAR. 10. 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 the 29th day of January, A. D. 1942, issued and on the 3d day of February 1942, served its complaint in this proceeding upon respondents, H. W. Lederer, individually, and as president of The Bible Institute, Inc., a New York corporation,

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and American Plate Glass Co., a corporation; The Bible Institute, Inc., a New York corporation; and American Plate Glass Co., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission permitted the respondents to file herein an amendment to said answer withdrawing the specific and general denials therein contained and admitting all of the material allegations of fact set forth in said complaint except as the same may be qualified by averments of fact set out in said answer other than the averments of fact contained in paragraph 5 thereof, and waiving all intervening procedure and further hearing on the said material allegations of fact set forth in said complaint. Later, respondents offered for filing, and the same was thereafter filed, a stipulation that The Bible Institute, a Delaware corporation, may be added as a party respondent herein, for the reason that the business and business operations of respondent, The Bible Institute, Inc., a New York corporation, were discontinued on July 12, 1941, at which time The Bible Institute, a Delaware corporation, was incorporated under the laws of that State to take over and continue the business and business operations of the said respondent, The Bible Institute, Inc., a New York corporation, which business and business operations it still continues. At the same time, all of the respondents herein filed a stipulation and agreement making the answer and amendment to answer theretofore filed herein by respondents, H. W. Lederer, The Bible Institute, Inc., a New York Corporation, and American Plate Glass Co. the answer and amendment to answer of all of said respondents. Thereafter, this proceeding regularly came on for hearing before the Commission, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, H. W. Lederer, is an individual, with his principal office and place of business located at 224 West Thirty-fourth Street, in the city of New York, State of New York, and is president of respondents, The Bible Institute, Inc., The Bible Institute, and American Plate Glass Co., the principal owner of the common capital stock of said corporate respondents, and controls the policies and activities of said corporations, including the conduct of sales and the character of advertising and other representations made in connection therewith.

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Respondent, The Bible Institute, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 224 West Thirty-fourth Street, in the city of New York, State of New York.

Respondent, The Bible Institute, 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 224 West Thirty-fourth Street, in the city of New York, State of New York.

Respondent, American Plate Glass 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 224 West Thirty-fourth Street, in the city of New York, State of New York.

PAR. 2. Respondent, H. W. Lederer, through respondent, The Bible Institute, Inc., and respondent, The Bible Institute, Inc., for several years last past have been engaged in the sale, transportation, and distribution for profit in interstate commerce of inexpensive and other editions of Bibles, prayer books, and other religious publications, principally to funeral parlors. Said respondents have said publications embossed with the names of the purchasers by a stamping concern whose office is the same as the principal office and place of business of said respondents. Said funeral parlors, in turn, distribute the publications to selected Sunday School children as a means of advertising. The New York corporation discontinued business on or about July 12, 1941, and was succeeded by The Bible Institute, a Delaware corporation organized by respondent, H. W. Lederer, to continue the business theretofore conducted by the New York corporation. The Delaware corporation continued to use the acts, practices, and methods used by respondent, The Bible Institute, Inc., the New York corporation, prior to its discontinuing business.

PAR. 3. Respondent, H. W. Lederer, through said respondent, American Plate Glass Co., and respondent, American Plate Glass Co., are now and for several years last past have been engaged in the sale, transportation, and distribution in interstate commerce of hand-bag mirrors, which they purchase from a dealer in New York City for resale to purchasers in the various States, among whom are cafes, night clubs, and banks, which in turn distribute them to their customers as a means of advertising. Said respondents have the names of such purchasers embossed on said hand-bag mirrors by a stamping concern whose office in New York City is the same as the one designated as the principal office and place of business of respondent, American Plate Glass Co.

PAR. 4. In the course and conduct of their business, as hereinbefore described, each of the said respondents, The Bible Institute, Inc., The

Bible Institute, and American Plate Glass Co., have employed and utilized, and now employ and utilize, the services of approximately three salesmen or solicitors, including respondent, H. W. Lederer, who canvassed, and now canvass, individual customers located in various States of the United States. When orders are received by such solicitors or salesmen, the orders are forwarded to the New York office of the said corporate respondents, and the wares called for therein are then shipped directly to the purchasers throughout the various States from the stock on hand purchased for that purpose by respondent, H. W. Lederer, for said corporate respondents.

PAR. 5. In order to facilitate and effect the sales of said Bibles, prayer books, and other religious publications, the said respondent, H. W. Lederer, adopted the name of The Bible Institute, Inc., for that respondent and the name The Bible Institute for its successor, for the purpose of deceiving the buying public into the belief that the respondents were and are religious institutions dedicated to the same worthy purposes for which the reputable Bible Institutes throughout the United States were organized, which thereby permitted them to make a wide distribution of publications at nominal prices, and to conceal from the said buying public the fact that said respondents were merely corporations formed to buy and sell inexpensive and other Bibles, prayer books, and other religious publications solely for profit to their customers throughout the various States of the United States.

PAR. 6. In order to facilitate and effect the sales of handbag mirrors, respondent, H. W. Lederer, adopted the name of American Plate Glass Co. for that respondent for the purpose of deceiving the buying public into believing that respondent, American Plate Glass Co., was a manufacturer of glass products, including said hand-bag mirrors, which thereby enabled said respondent, American Plate Glass Co., to make lower prices than would be possible otherwise, and to conceal from said buying public that said respondent merely purchased said hand-bag mirrors from a dealer in New York City for resale to purchasers throughout the various States of the United States.

PAR. 7. The salesmen and solicitors of respondents, The Bible Institute, Inc., and The Bible Institute, including the respondent, H. W. Lederer, have used the following means and methods in soliciting the sale of and in selling their said publications to the consuming public.

(a) Said agents and solicitors have knowingly given the false impression to prospective purchasers, through the use of their deceptive and misleading letterheads and advertising, that respondents, The

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Bible Institute, Inc., and The Bible Institute, are religious institutions and identified with the worthy and reputable Bible Institutes located throughout the United States, and that a J. C. MacDonald is "trustee" for said institutes and that said respondents furnish a free Sunday School distribution of religious publications, whereas, on the contrary, said respondents are not religious institutions or organizations, their operations being conducted solely for profit, and they are not identified with any Bible Institute in the country and are not engaged in any of the worthy causes for which such Bible Institutes were organized and they do not have any J. C. MacDonald in their employ, and they do not have a trustee, but only use such title to conceal from the buying public the mercenary character of the business of said respondents; and said respondents do not furnish a free distribution of their publications.

(b) Said agents and solicitors have falsely represented to prospective purchasers that said respondents, The Bible Institute, Inc., and The Bible Institute, are religious institutions; that they are identified with other institutions in various States of the country having the same or similar names; that they are endowed by philanthropic interests which permit said respondents to make a wide distribution of Bibles, prayer books, and other religious publications; whereas, on the contrary, said respondents are not religious institutions and are not identified with other institutions throughout the various States having the same or similar names, and are not endowed by philanthropic interests, or endowed at all.

PAR. 8. The salesmen and solicitors of respondent, American Plate Glass Co., including and respondent, H. W. Lederer, have used the following means and methods in soliciting the sale of and in selling hand-bag mirrors to the purchasing public.

(a) Said agents and solicitors have knowingly given the false impression to prospective purchasers, through the use of respondent, American Plate Glass Co.'s letterheads and advertising, that said respondent, American Plate Glass Co., is a large glass manufacturer with plants and advertising offices in Pittsburgh, Chicago, and New York, and that it has a number of departments, and has a superintendent named J. C. MacDonald, whereas, on the contrary, said respondent is not a glass manufacturer and has no plants or departments, or advertising offices, and has not more than three employees, all of whom are salesmen, including respondent, H. W. Lederer, and has no superintendent and has no J. C. MacDonald.

(b) Said agents and solicitors have falsely represented to prospective purchasers that said respondent, American Plate Glass Co., is

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affiliated with a large and well-known Pittsburgh glass manufacturing company and that it manufactures the hand-bag mirrors which are the only articles that it sells, whereas, on the contrary, said respondent is not affiliated with any glass manufacturing company; and it does not manufacture the hand-bag mirrors which it sells as aforesaid, but purchases same from dealers in New York City for purposes of resale.

PAR. 9. The acts and practices of the respondents as above found, in the course of selling and offering for sale their wares in commerce as hereinabove described, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said false, misleading and deceptive representations are true, thereby inducing the purchase of respondents' wares.

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 original answer and amended answer of respondents, in which amended answer respondents withdraw the specific and general denials of fact set forth in said original answer with certain exceptions, admit all of the material allegations of fact in said complaint with certain qualifications, and waive all intervening procedure and further hearing as to said facts, and a stipulation executed by all of said respondents, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, H. W. Lederer, his representatives, agents and employees, directly or through respondent, The Bible Institute, Inc., The Bible Institute, or any other corporate or other device, and respondents, The Bible Institute, Inc., and the Bible Institute, their officers, agents and employees, in connection with the offering for sale, sale or distribution of Bibles, prayer books and other religious or other publications 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 word "Institute" as part of the trade or corporate name under which their said business is conducted, or using the word "Institute" or any word of similar import, to in any way describe or refer to said business.

2. Representing in any manner or by any method that said respondents are engaged in work of a religious nature, or that they are connected with any institution.

3. Representing in any manner or by any method, that the business of said respondents is conducted by a trustee.

4. Representing in any manner or by any method that said respondents furnish free religious publications for Sunday Schools or other church activities.

5. Representing in any manner or by any method that the business conducted by said respondents is endowed by philanthropic or any other interests in order to permit a wider distribution of religious publications, or for any other purpose.

It is further ordered, That respondent, H. W. Lederer, his representatives, agents and solicitors, directly or through respondent, American Plate Glass Company, or any other corporate or other device, and respondent, American Plate Glass Company, its officers, agents and employees, in connection with the offering for sale, sale or distribution of hand-bag or other mirrors or glass products 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 said respondents are manufacturers of the glass products offered for sale and sold by them.

2. Representing, directly or by implication, that said respondents own, control, or operate plants or branch offices in Chicago, Ill., Pittsburgh, Pa., New York City, N. Y., or elsewhere.

3. Representing, directly or by implication, that the business conducted by said respondents is a substantial one, consisting of a number of departments, and requires the services of a superintendent.

4. Representing, directly or by implication, that said respondents are in any way connected with any glass manufacturing company, except as a purchaser of glass products for resale.

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
LUSTBERG, NAST & 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 2536. Complaint, Nov. 22, 1938¹—Decision, July 10, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of heavy clothing used by sportsmen and outdoor workers, including coats, shirts, mackinaws, jackets, and other garments made from woven fabrics of cotton, wool, and rayon—

Featured in advertisements in newspapers and magazines of nation-wide circulation, in trade literature and on labels attached to its products and their containers, its registered trade-marks displaying prominently "Buck Skein," with or without a deer's head, along with such additional words as "Jacket," "Trousers" and "Rain Coat," and including among its marks "Buck Skein Joe" and "Lady Buck Skein," and thereby represented that its said garments were made of buckskin, notwithstanding use of such expressions in small type and in inconspicuous place in its advertising as "looks like leather, wears forever," "all wool," "looks like buckskin," and "Double Weight Buck Skein Fabrics";

When in fact they were not made of the skin of a deer or an elk—garments of which, with their soft, pliable, lightweight and water-resistant qualities, are preferred, especially among sportsmen and those engaged in outdoor work, over the much less costly garments of woven fabric—but were made as aforesaid from wool, cotton, and rayon fabrics;

With effect of giving its advertisements a greater force and drawing power than those of its competitors who do not represent their similar products as buckskin; of placing in the hands of retailers and other dealers means of making and furthering such false representations and thus enabling them to increase sales of its products, thereby lessening the market for similar goods, the nature of which is truthfully stated; and of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true and into the purchase, as a result, of a substantial volume of its said garments; whereby trade was unfairly diverted to it from competitors who truthfully represent their products; to the injury of competition in commerce:

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

Before Mr. Edward M. Averill, Mr. John J. Keenan, Mr. Arthur F. Thomas and Mr. Lewis C. Russell, trial examiners.

Mr. John W. Hildrop and Mr. James M. Hammond for the Commission.

Kadel, Sheils & Weiss and Stroock & Stroock, of New York City, and Mr. Logan Morris, of Washington, D. C., for respondent.

¹ Amended.

Complaint

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 Lustberg, Nast & Co., Inc., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation, organized and existing pursuant to and under the laws of the State of New York, with its office and principal place of business located at 212 Fifth Avenue, in the city of New York, State of New York. It operates factories located at Lebanon, Pa., and Middletown, N. Y. It is, and for more than 1 year last past has been, engaged in the manufacture, among other things, of heavy clothing such as is commonly used by sportsmen, and outdoor workers. It causes said products, when sold, to be shipped from its factories, located as aforesaid, or from its principal place of business in New York City, N. Y., 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 clothing in commerce among and between the various States of the United States and in the District of Columbia. In the course and conduct of its business, said respondent has been at all times herein referred to in competition with other corporations, firms, partnerships, and individuals also engaged in the sale and distribution of similar products or other products designed for similar wear in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent adopted and now uses the term "Buck-skein" as a trade name, to designate a line of its products consisting of coats, shirts, mackinaws, jackets, and other garments manufactured from woven fabrics made of such materials as cotton, wool, and rayon. In some instances, the material used is rubberized or processed by or at the instance of the respondent, to give it waterproofing or rain-resisting qualities. For the purpose of aiding, assisting, and furthering the sale of its products to the purchasing and consuming public, the respondent causes advertisements and representations in which, among other ways, it prominently displays in very large type the term "Buck-skein," to be inserted in newspapers, magazines, and journals of Nation-wide circulation, and in its trade literature. To further stress the significance and meaning desired to be given to this

term and to increase the drawing power of its advertisements, respondent generally places immediately above, and in close juxtaposition therewith, a picture of the head of a deer. Labels, similarly embellished with this design, either with or without the deer head, are generally affixed by respondent to its products. In some instances the term "Buck-skein Joe" is used in like manner.

PAR. 3. Buckskin is the skin of either the deer or elk, which has been tanned by what is known as the oil process. It is exceedingly durable and possesses the quality of being highly resistant to wind and weather. It is also soft, pliable, light in weight, and may be washed. It is water-resistant without the disadvantage of being airtight, and permits sufficient air to pass through to allow its use as garment, shoe or glove leather. It is highly prized for these desirable qualities, especially by sportsmen and those engaged in outdoor work, and is far more expensive than any manufactured cloth or fabric used or substituted for a like purpose and is preferred by many such users to any other material for use in garments for sport or outdoor wear.

PAR. 4. The term "Buck-skein" is a slightly distorted spelling of the word "buckskin" and is unfairly simulative thereof. The respondent's use, in its advertisements and in the other ways herein mentioned, of the term "Buck-skein" and the picturization of a deer head, either separately or in conjunction therewith, to describe, designate or refer to respondent's garments made from woven fabrics serves as representations that said garments so described or designated are actually made from buckskin, the oil tanned skin of the deer or elk, or possess the desirable and preferable qualities and characteristics of buckskin. The garments manufactured, sold, and represented by the respondent, as described in paragraphs 1 and 2 hereof, are not made from buckskin, or any other leather product, but are manufactured from woven fabrics made of such materials as wool and cotton and do not possess the desirable and preferable qualities and characteristics of buckskin.

Respondent's false and deceptive representations also serve to unfairly attract the attention of the public to respondent's advertisements and gives them a greater force and drawing power to purchasers and prospective purchasers than advertisements of respondent's competitors who manufacture and sell similar garments but who do not represent the same as "Buck-Skein" or in any other way lead the public into the mistaken belief that their products are made from buckskin or possess the qualities or characteristics of buckskin.

Respondent's acts and practices as herein set out have also placed in the hands of retailers and dealers the means of making and furthering such false and misleading representations and have enabled such

retailers and dealers to increase their own sales of respondent's product so designated, described and represented, thereby lessening the market for similar goods, the nature, quality and character of which is truthfully stated.

PAR. 5. Outdoor garments of sundry competitors of respondent are and have been sold and distributed in commerce among and between the various States of the United States to the purchasing and consuming public in competition with respondent's products, but without fictitious and erroneous statements and representations with reference to the quality, nature, or character of materials used in their manufacture.

PAR. 6. The use by the respondent of the false and misleading statements and representations as hereinabove set out, in offering for sale and in selling its products, was and is calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing and consuming public into the mistaken and erroneous beliefs that all of said representations are true, and that said garments so described and designated are actually made from buckskin or possess the desirable and preferable qualities and characteristics of buckskin and into the purchase of a substantial volume of respondent's garments in and on account of said beliefs induced by the aforesaid acts, practices and misrepresentations of respondent. As a result, trade has been diverted unfairly to the respondent from corporations, firms, partnerships, and individuals likewise engaged in the business of manufacturing, distributing, and selling similar garments in commerce among and between the various States of the United States who truthfully advertise and represent their products. In consequence thereof injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 30th day of August, A. D. 1935, issued and thereafter served its complaint in this proceeding upon the respondent, Lustberg, Nast & Co., Inc., a corporation, and on the 22d day of November, A. D. 1938, issued and thereafter served

its amended complaint upon the respondent, 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 original complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. After the issuance of the amended 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 by attorneys for the Commission and for the respondent before duly appointed trial examiners of the Commission designated by it to serve in this proceeding; and it was stipulated between the said attorneys that the testimony and evidence introduced in support of the original complaint should have the same force and effect as if introduced in support of the amended complaint. The testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding came on for final hearing before the Commission on the amended complaint, the answer thereto, the testimony and other evidence, reports of the trial examiners and exceptions thereto, briefs in support of and in opposition to the allegations of 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 is a corporation organized under the laws of the State of New York having its principal place of business in the city and State of New York, with factories located at Lebanon, Pa., and Middletown, N. Y. Respondent, for more than 20 years last past has been and now is engaged in the manufacture and sale of heavy clothing, such as is commonly used by sportsmen and outdoor workers, including coats, shirts, mackinaws, jackets, and other garments manufactured from woven fabrics of such materials as cotton, wool, and rayon. Respondent causes its products, when sold, to be shipped from its factories or its principal place of business to purchasers thereof located in numerous States of the United States other than the State of origin of such shipments. Respondent maintains,

and at all times herein mentioned has maintained, a course of trade in said products in commerce between and among the various States of the United States, and during all of said time has been in competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of similar products in commerce between and among various States of the United States.

PAR. 2. Respondent, in June 1924, registered a trade-mark in the United States Patent Office, consisting of the words "Buck Skein," and between the two words appeared a deer's head surmounted by antlers. Respondent subsequently also registered other trade-marks featuring the words "Buck Skein," sometimes with and sometimes without an accompanying deer's head, with such additional words as "jacket," "trousers," "rain coat." "Buck Skein Joe" is one of respondent's trade-marks; "Lady Buck Skein" is another.

Respondent, for the purpose of promoting the sales of its product, causes advertisements to be inserted in newspapers, magazines, and journals of nation-wide circulation, and in trade literature, in which its said trade-marks are displayed in large and conspicuous type, and on the labels attached by respondent to its various products and on the containers thereof, its trade-marks are also prominently displayed. The trade-mark most generally used by respondent in this connection is that consisting of the words "Buck Skein" and depicting the antlered deer's head between the two words. The drawing power of respondent's advertisement is enhanced by this picturization of a deer's head in connection with the words "Buck Skein," which induces the public to mistakenly believe that respondent's products are made from the skin of a deer.

Buckskin is the skin of a deer or elk. It is exceedingly durable, is highly resistant to wind and weather, is soft, pliable, light in weight and water-resistant. The cost of garments made of buckskin greatly exceeds that of garments made of cloth or other woven fabric ordinarily used for such purpose, and there is a preference, especially among sportsmen and those engaged in outdoor work, for garments made of buckskin.

PAR. 3. The term "Buck Skein" used by respondent is a slightly distorted spelling of "buckskin" and when used by respondent either separately or in conjunction with the picturization of a deer's head to describe, designate or refer to its garments made of woven fabric serves as a representation that such garments are actually made of buckskin.

The garments manufactured, sold and represented as described in paragraphs 1 and 2 hereof, are not made from buckskin or any other

leather product, but are manufactured from woven fabrics made of such material as wool, cotton, and rayon.

Respondent's said false and deceptive representations serve unfairly to attract the attention of the public to its advertisements and gives to them a greater force and drawing power than those of its competitors who manufacture and sell similar garments, but who do not represent them as "Buck Skein" or otherwise lead the public into the mistaken and erroneous belief that their products are made of buckskin.

Respondent, by its said acts and practices has placed in the hands of retailers and other dealers the means of making and furthering such false and misleading representations, and has enabled them thus to increase the sales of respondent's products, thereby lessening the market for similar goods, the nature, quality and character of which are truthfully stated.

PAR. 4. The use by respondent of the false and misleading statements and representations as herein stated 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 representations are true, and that the garments sold by respondent are made from leather or buckskin, and because of such belief, to purchase a substantial volume of respondent's said garments. As a result, trade has been unfairly diverted to respondent from competitors selling similar garments in commerce between and among various States of the United States who truthfully advertise and represent their products. In consequence thereof, injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 5. The record does not disclose that anyone examining respondent's products believe they were made of buckskin, but ten persons who ordered respondent's products as a result of having seen its said advertisements, did so in the mistaken belief that the products ordered were made of leather or buckskin. Eight witnesses, after reading respondent's said advertisements, testified that they believed respondent's products were made of buckskin or other leather.

The use by respondent of the words "Buck Skein," with or without the deer's head in juxtaposition thereto, causes the purchasing public to believe that respondent's products are made of leather or buckskin, or possess some of the prized qualities or characteristics of buckskin; and such belief is not affected by such expressions as "looks like leather, wears forever," "all wool," "looks like buckskin," and "Double Weight Buck Skein Fabrics" appearing in small type in an inconspicuous place in respondent's advertisements.

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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, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission; the respondent's answer thereto; testimony and other evidence in support of and in opposition to the amended complaint introduced by attorneys for the Commission and for the respondent before duly appointed trial examiners of the Commission designated by it to serve in this proceeding and, by stipulation between attorneys for the Commission and the respondent, the testimony introduced in support of the original complaint; reports of the trial examiners and exceptions thereto; briefs in support of and in opposition to the amended complaint, and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Lustberg, Nast & 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 coats, shirts, mackinaws, jackets, or other garments, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Buck Skein," either alone or in conjunction with the outline of a deer's head, or any other colorable simulation of the word "buck skin," in advertising, or otherwise, to describe, designate, or refer to any product which is not made from the skin of a deer or elk;
2. Representing directly or by implication in any advertisement, or on labels, or otherwise, that any product made of wool or cotton or any other woven fabric is made of buckskin or other type of leather.

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
INLAND EMPIRE BAKERS' 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 4550. Complaint, July 30, 1941—Decision, July 10, 1942

Where a nonprofit corporation, membership of which was composed of individuals and concerns engaged in the manufacture and in the sale and distribution of bread and other bakery products in the "Inland Empire," comprising eastern Washington and the Idaho "Panhandle," in the case of certain members transporting their products across the State line between the two, and, except insofar as their competition had been restrained as below set forth, in competition with one another and with other bakeries in the area mentioned; and certain representative members;

Following the court's invalidation of the "Washington Agricultural Adjustment or Triple A Act"—which, enacted shortly after the organization of the association, provided for the adoption and enforcement of marketing agreements by various industries in the State handling agricultural products, and pursuant to which the Washington bakers, acting through the association, had adopted and promulgated a marketing agreement regulating the baking industry in eastern Washington, including the fixing of uniform prices on all bakery products—and subsequent to unsuccessful efforts to embody in a contract, in substance, the provisions of said marketing agreement; with a desire of continuing the benefits which had accrued to them thereunder—

- (a) Undertook to obtain such results through means of informal agreements and understandings reached through the meetings and other activities of the association, and thereby succeeded in maintaining substantially same schedule of prices as had been obtained under said Triple A Marketing Agreement; and, while members mostly sold only intrastate, did not except or exclude from their agreements interstate sales;
- (b) From time to time checked up on isolated instances in which bakers did not maintain prices fixed by them, and made efforts to coerce such recalcitrant bakers into maintaining fixed prices; and
- (c) Were instrumental in obtaining State enactment of a price recording statute under which all bakers selling their products within the State were required to file their prices with its Director of Agriculture, and, could change such filed prices only on ten days' notice; and, through their association, supplied bakers with blank forms for use in such price filing and advised and assisted them therein, and thereby were enabled to keep informed with respect to prices and contemplated price changes;

With the result that uniform prices were thus fixed in all interstate as well as intrastate sales made by any of their number; and with tendency and capacity substantially to restrain and suppress competition in the sale and distribution of bread and other bakery products in commerce, to increase the prices paid by the immediate purchasers and consequently the prices paid by the consuming public, and to deprive such purchasers and consuming public of the advantages which would prevail under conditions of free and open competition;

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Mr. Roy A. Redfield, of Spokane, Wash., 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 corporations, associations, firms, and individuals named in the caption hereof, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Inland Empire Bakers' Association, Inc., is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located at 311 Radio Central Building, Spokane, Wash. The membership of said respondent, Inland Empire Bakers' Association, Inc., is composed of individuals, partnerships, and corporations who are engaged in the business of processing, manufacturing, offering for sale, selling, and distributing bread and bakery products in certain areas in the States of Washington and Idaho. Said respondent is hereinafter referred to for convenience as "respondent association."

PAR. 2. The following-named individuals are or have been officers of said respondent association and are named as respondents herein both in their individual capacities, and as officers of said association: L. L. Francis, % Silver Loaf Baking Co., 1102 West Ide Street, Spokane, Wash., president; Mel Jacobsen, % Jacobsen's Bakery, 617 North Ash Street, Spokane, Wash., vice president; V. B. Pringle, 311 Radio Central Building, Spokane, Wash., secretary and executive manager.

PAR. 3. The membership of said respondent association varies from time to time, and it is therefore impractical to specifically name all of said members as respondents herein. The following-named corporations and individuals are representative of the whole membership of said respondent association and are named as respondents herein individually and severally and as members of said association and as

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representatives of all members of said respondent association as a class, including those not herein specifically named, who are also made respondents herein: Silver Loaf Baking Co., a corporation, 1102 West Ide Street, Spokane, Wash.; E. A. Boge, doing business under the name and style of Boge Brothers Bakery, 401 South Sherman Street, Spokane, Wash.; and Olaf Jacobsen, doing business under the name and style of Jacobsen's Bakery, 617 North Ash Street, Spokane, Wash. Said respondents are hereinafter referred to for convenience as "respondent members."

PAR. 4. Respondent, Silver Loaf Baking Co., is a corporation, organized and existing under the laws of the State of Washington, and maintains its principal office and place of business at 1102 West Ide Street, Spokane, Wash.

Respondent, E. A. Boge, is the owner and operator of Boge Brothers Bakery, with his principal office and place of business at 401 South Sherman Street, Spokane, Wash.

Respondent, Olaf Jacobsen, is the owner and operator of Jacobsen's Bakery, with his principal office and place of business located at 617 North Ash Street, Spokane, Wash.

PAR. 5. Said respondent members of respondent association are engaged in the manufacture and distribution of bread and bakery products in the eastern part of the State of Washington and the western part of the State of Idaho. Many of said respondent members, in connection with the distribution for sale and sale of such bakery products, and in the regular course of their respective businesses, ship or cause some of said commodities to be transported across the State line between the States of Washington and Idaho, that is, from the point of origin of such products in one of such States to the customers buying the same in the other. There is and has been at all times herein mentioned a current of trade and commerce in bread and bakery products between said States of Washington and Idaho. Said respondent members are in competition with one another and with other bakers in the distribution for sale and sale of such bakery products, in the areas above mentioned, except insofar as such competition has been hindered, lessened, and restrained as hereinafter alleged.

PAR. 6. Respondent officers and members of respondent association, since about 1935, have agreed and confederated together, and have united in and pursued a common and concerted course of action, acting through and by means of respondent association, to restrict, restrain, and suppress competition in the sale and distribution of bread and bakery products by the manufacturers thereof to their customers located in the eastern part of the State of Washington and the western

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part of the State of Idaho, by agreeing to fix and observe, among themselves, uniform and noncompetitive prices for such commodities, and by agreeing to act collectively to enforce and impose upon all bakers selling said products in such area the use of such noncompetitive prices so fixed by respondents. Since said date, respondents have adopted, followed, and adhered to said policy of fixing and maintaining artificial, uniform, and noncompetitive prices for bread and bakery products in said area by the use of the various devices and means hereinafter set forth.

PAR. 7. Pursuant to said agreement, combination, and policy, and in furtherance thereof, respondents have done, among other things, the following:

1. Formulated, carried out, and made effective the policy and methods described in the preceding paragraph.
2. In 1935 and 1936 respondents attempted to secure the signatures of all bakers in eastern Washington and western Idaho to a written agreement fixing the prices at which bread and bakery products were to be sold in such area.
3. Held meetings of said respondent association and its officers and members at which the policy of fixing prices on bread and bakery products, above described, was discussed, adopted, and agreed to.
4. Issued and circulated bulletins, circulars, and letters in furtherance of said agreement and policy and in aid of efforts by respondents to establish, effectuate, and maintain the same.
5. Assisted all bakers in the area mentioned in drawing up schedules of uniform prices for bread and bakery products to be filed with the Department of Agriculture of the State of Washington, in accordance with a statute of said State, and coercively attempted to prevent changes in such schedules.
6. Cooperated with other associations of bakers in fixing prices on bread and bakery products in areas on the borders of or adjacent to the territory served by respondent members.
7. Checked up on individual bakers refusing to adhere to said prices so fixed by respondents and coerced them, or attempted to coerce them, into adhering to such prices and policy.
8. Supervised generally the practices and prices of all bakers in the area mentioned and attempted to require them to conform to respondents' prices and program.

PAR. 8. The officer respondents hereinbefore named are now, and have been, officers of said respondent association, and as such officers, have had, and now have, full and complete charge of the activities of said respondent association, and have conducted the affairs of said

association in pursuance to and in furtherance of the objects and aims of said association as above set forth. .

PAR. 9. The results of the acts and practices of the said respondent members and of said respondent association, as herein set forth, have been, and now are, to substantially lessen, restrict, restrain, and suppress competition in the interstate sale of bread and bakery products in the States of Washington and Idaho and to empower the said respondents to control the market and enhance the prices of said products above the prices which would prevail under normal, natural, free, and open competition. Said acts and practices also have tended to promote a monopoly in said respondents in the manufacture and sale of said commodities in the trade areas hereinabove mentioned.

PAR. 10. 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 said respondents in the sale of said products in commerce within the intent and meaning of the Federal Trade Commission Act, and have placed in said respondents the power to control prices; have increased the prices of said products paid by the purchasers thereof and consequently the prices paid by the public; have tended to create in the said respondents a monopoly in the sale of said products in such commerce, and have unreasonably restrained such commerce in said 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 July 30, 1941, issued and subsequently served upon the respondents named in the caption hereof, its complaint, in this proceeding, charging the respondents with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of the respondents' answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondents, before 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 answer of the respondents, testimony and other evidence (including certain testimony omitted from the trial examiner's report, which omissions were made the subject of exceptions by the respondents), report of the trial

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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, Inland Empire Bakers' Association, Inc. (hereinafter referred to as "respondent association" and as "the association"), is a nonprofit corporation organized and existing under the laws of the State of Washington, with its principal office and place of business at 311 Radio Central Building, Spokane, Wash. The membership of the association is composed of individuals, partnerships, and corporations engaged in the manufacture and in the sale and distribution of bread and other bakery products in certain areas in the States of Washington and Idaho.

Respondent, L. L. Francis, 1102 West Ide Street, Spokane, Wash., is or was until recently president of the association; respondent Mel Jacobsen, 617 North Ash Street, Spokane, Wash., is vice president of the association; and respondent V. B. Pringle, 311 Radio Central Building, Spokane, Wash., is secretary and executive manager of the association. These individuals formulate the policies and conduct, direct, and control the acts and practices of the association, and are joined as respondents in this proceeding both in their individual capacities and in their capacities as officers of the association.

The membership of the association varies from time to time, and it is therefore impracticable to name all of the members specifically herein. The corporation and individuals named below are representative of the entire membership of the association and are named as respondents herein individually and as members of the association, and also as representative of all the members of the association as a class: Silver Loaf Baking Co., a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business at 1102 West Ide Street, Spokane, Wash.; E. A. Boge, doing business under the name of Boge Brothers Bakery, with his principal office and place of business at 401 South Sherman Street, Spokane, Wash.; and Olaf Jacobsen, doing business under the name of Jacobsen's Bakery, with his principal office and place of business at 617 North Ash Street, Spokane, Wash. The members of the association, including those named above, are frequently referred to hereinafter as "respondent members" or as "members."

PAR. 2. The members of the association are engaged in the manufacture and in the sale and distribution of bread and other bakery products in the area known as the "Inland Empire," which comprises the eastern part of the State of Washington and the northern part of the State of Idaho, frequently referred to as the "panhandle" of Idaho. In the course and conduct of their respective businesses, and in connection with the sale and distribution of their products, certain members ship some of their products or cause them to be transported across the State line between the States of Washington and Idaho—that is, from the point of origin of such products in one of these States to the purchasers of the products located in the other State. These members maintain, and for many years last past have maintained, a course of trade in their respective products in commerce between the States of Washington and Idaho.

PAR. 3. Except insofar as competition has been hindered, lessened, and restrained as a result of the acts and practices hereinafter described, all of the respondent members are in competition with one another and with other bakers in the sale and distribution of bakery products in the areas mentioned above, and those members selling and distributing their products in interstate commerce are in competition with one another in such commerce and also with other bakers engaged in selling and distributing bakery products in such commerce.

PAR. 4. The association was organized in January 1934, at which time respondent V. B. Pringle was made its secretary and executive manager, and in November 1934, a formal constitution was adopted. The ostensible purposes of the association were set forth in the constitution in the form of a "Declaration of Principles," as follows:

Principle 1.—We believe that men who cooperate in the organization of the baking industry, so as to afford the greatest opportunity for development of this baking industry, to better serve the public and those other industries associated with them, then his service is of value to all.

Principle 2.—The principles of this association shall be to protect, promote, foster, and advance the interest of the baking industry and its members.

Principle 3.—To bring about the stabilization of the baking industry, so that, individually and collectively, members may voice their needs in developing a better industry.

Principle 4.—To cooperate collectively in giving the public an understanding of the importance of the tenth largest industry in the United States.

Principle 5.—To assist members of the baking industry in arriving at a proper cost of operation and perfecting the baking industry in all its branches.

Principle 6.—It is the intent of the association to foster and perpetuate a cooperative spirit and to treat his competitors in the baking industry, as he would like to be treated.

Principle 7.—To effectuate the policy of farm relief and to eliminate such trade practices as tend to lessen the use of farm products.

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Principle 8.—To produce and relieve unemployment and improve the standard of labor.

Principle 9.—To effectuate better competitive conditions of the baking industry, which will tend to increase the consumption of farm products and reflect accordingly to the benefit of the consumer, producer, manufacturer, and employees, as well as a fair and reasonable profit to the employer.

Principle 10.—The association is not organized for pecuniary profit and shall not declare dividends or other financial distribution to its members.

It was originally contemplated that the Association would include in its membership the bakers of eastern Washington, northern Idaho, and the western section of Montana, and in the early days of its operations the association did number among its members, in addition to practically every baker in eastern Washington, a number of bakers located in northern Idaho. Shortly after the association was organized, however, the State of Washington enacted an Agricultural Adjustment Act, known generally as the Washington Triple A, which provided for the adoption and enforcement of marketing agreements by the various industries in the State handling agricultural products. Not long afterward, the State of Idaho enacted similar legislation. As a result of the enactment of these statutes, the bakers composing the membership of the association divided into two groups. The Washington bakers, acting through the association, proceeded to adopt and promulgate a marketing agreement which provided for the regulation of the baking industry in eastern Washington, including the fixing of uniform prices on all bread and other bakery products sold in that part of the State. The effective date of this agreement was March 15, 1934. The secretary and executive manager of the association, respondent Pringle, was the State administrator of the Washington Triple A for the eastern Washington area, and from time to time new price lists were issued by Pringle.

Likewise, the bakers in northern Idaho proceeded to organize under the Idaho Triple A and to adopt and promulgate a marketing agreement fixing the prices on all bakery products sold in that part of Idaho. By this time the Idaho bakers had discontinued their membership in the association (except one baker, who sold a substantial portion of his products in eastern Washington), and their activities were not conducted through the association, as were the activities of the Washington bakers. While the Idaho Agricultural Adjustment Act has never been declared invalid by the courts, the Attorney General of Idaho has rendered an opinion to the effect that the act is unconstitutional.

PAR. 5. In July 1935, the Washington Agricultural Adjustment Act was held invalid by the Supreme Court of that State. As the prices which the eastern Washington bakers had been receiving for

their products under the marketing agreement were substantially higher than the prices which had prevailed prior thereto, the bakers were desirous of continuing in some other form and by some other means the benefits which had accrued to them under the Triple A. They first undertook to do this through a proposed contract designated by them as "Eastern Washington Fair Trade Agreement," which embodied in substance the provisions of the marketing agreement promulgated under the Triple A. This contract was signed by some forty bakers in the eastern Washington area, but it never became effective because it required as a condition precedent to its taking effect the signatures of bakers representing 85% of the normal production of bakery products within that area, and one of the largest bakers in the area declined to join in the agreement.

PAR. 6. Having failed in their efforts to obtain the adoption of this formal contract, the members of the association undertook to obtain the same results by means of informal agreements and understandings reached through the meetings and other activities of the association. The minutes of meetings held between September 5, 1935, and June 2, 1937, are in evidence, and they are replete with statements by various officers and members showing the existence of such agreements and understandings, and showing that concerted and cooperative action was taken by the respondents pursuant thereto. In this manner and by these means, the respondents sought to maintain and were successful in maintaining substantially the same schedule of prices as had obtained under the Triple A marketing agreement. The evidence further shows that the association from time to time checked up on isolated instances in which bakers in that area did not maintain the prices fixed by respondents, and efforts were made to coerce such recalcitrant bakers into maintaining the fixed schedule of prices.

PAR. 7. The respondents were also instrumental in obtaining, in January 1937, the enactment by the State of Washington of a price-recording statute under which all bakers selling their products within the State were required to file their prices with the State director of agriculture. Such prices, once filed, could not be changed except upon 10 days' notice. Through the association the respondents maintained a close check on all prices filed by bakers in the eastern Washington area. Respondent Pringle, in his capacity as secretary and executive manager of the association, contacted the bakers in the area, supplied them with blank forms to be used in filing their prices, and advised and assisted them in their price filings, obtaining a commission as notary public in order that he might be able to notarize

Conclusion

the executed forms. In this manner the respondents were enabled to keep themselves informed with respect to the prices of the bakers in that area, and with respect also to any contemplated changes in prices.

PAR. 8. The respondents do not deny that they sought, through mutual agreements and concerted action, to maintain a schedule of uniform prices governing the sale of their products, but they insist that such agreements and activities related only to the sale of products within the State of Washington, and that interstate sales were in no way involved. The record discloses, however, that at no time were interstate sales excepted or excluded from the agreements, and those members of the association who sold their products in interstate commerce adopted and maintained the agreed schedule of prices in their interstate transactions as well as in intrastate sales. While the agreements may have contemplated intrastate sales primarily, this being due to the fact that most of the respondents sold only within the State in which they were located, the result of the agreements was that uniform prices were also fixed in all interstate sales made by any of the respondents. A significant circumstance indicating that it was the intention of the respondents to regulate trade in both Washington and Idaho and between the two States is that, in 1940 and 1941, strenuous efforts were made to reenlist the northern Idaho bakers in the association. That these efforts met with substantial success is attested by the fact that in 1941 eleven bakers in northern Idaho renewed their membership in the association.

PAR. 9. The agreements, understandings, combinations, and conspiracies entered into by the respondents, and the acts done pursuant thereto and in furtherance thereof, as herein described, have had and now have the tendency and capacity substantially to lessen, restrict, restrain, and suppress competition among the respondents in the offering for sale, sale, and distribution of bread and other bakery products in commerce between the States of Washington and Idaho, to increase the prices paid by the immediate purchasers of such products, and consequently the prices paid by the consuming public, and to deprive such purchasers and the consuming public of the advantages which would prevail under conditions of normal, natural, free, and open competition among the respondents.

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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of the allegations of the complaint and in opposition thereto, taken before a trial examiner of the Commission theretofore duly designated by it, the 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, Inland Empire Bakers' Association, Inc., a corporation; L. L. Francis, individually and as president of said association; Mel Jacobsen, individually and as vice president of said association; V. B. Pringle, individually and as secretary and executive manager of said association; Silver Loaf Baking Co., a corporation, a member of said association; E. A. Boge, trading as Boge Brothers Bakery, individually and as a member of said association; Olaf Jacobsen, trading as Jacobsen's Bakery, individually and as a member of said association; 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 said association and of the respective members thereof, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of bread and other bakery products 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 prices for bakery 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:

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(a) Fixing, establishing, or maintaining uniform prices for bakery products.

(b) Entering into discussions for the purpose or with the effect or agreeing upon, arriving at, adopting, fixing, or maintaining uniform prices for bakery products.

(c) Coercing or attempting to coerce any person, partnership, or corporation engaged in selling bakery products into establishing or maintaining uniform prices fixed by 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

GRAND RAPIDS FURNITURE CO., INC.

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

Docket 4463. Complaint, Feb. 11, 1941—Decision, July 13, 1942

Where a corporation, engaged in competitive interstate sale and distribution of furniture—

Represented, through use of its corporate name, including words "Grand Rapids," and through use, occasionally, of words "Grand Rapids" and "Grand Rapids Furniture" separately and independently of its corporate name, in newspapers of interstate circulation, and by radio broadcasts, that furniture offered and sold by it, or a major portion thereof, was manufactured in Grand Rapids, Mich.;

The facts being that while in its early days it did purchase a major portion of its furniture from manufacturers in Grand Rapids—long known as an important center of the furniture industry, products of which, by reason of their reputation, for quality, style, and other desirable characteristics, are preferred by a substantial portion of the purchasing public, so that dealers frequently use as a selling point said origin—such purchasing had declined until in recent years it obtained not over 5 percent from the city in question, and none of the specific articles referred to in said advertisements were in fact made there;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public in said respect, and result of thereby causing such public to purchase substantial quantities of its furniture because of such mistaken belief, whereby trade was unfairly diverted to it from its competitors who do not misrepresent the place of origin of their products:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. J. R. Phillips, Jr., and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Aaron Heller and *Mr. Sol Eigen*, of Passaic, N. J., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Grand Rapids Furniture Co., Inc., a corporation, hereinafter referred to as re-

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spondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Grand Rapids Furniture Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and place of business located at 300-302 Monroe Street in the city of Passaic, State of New Jersey. Respondent is now, and for several years last past has been, engaged in the sale and distribution of household furniture to purchasers located at points in the various States of the United States, and causes and has caused said household furniture, when so sold, to be transported from its place of business in the city of Passaic, State of New Jersey, to purchasers thereof in the State of New Jersey and to purchasers located in other States of the United States. Respondent now maintains, and for more than 5 years last past has maintained, a course of trade in said household furniture in the State of New Jersey and in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, the respondent is, and for more than 5 years last past has been, in competition with corporations, individuals, and partnerships located in the various States of the United States other than the State of New Jersey, who are engaged in the sale and distribution of household furniture in commerce between and among the various States of the United States and in the District of Columbia. Among the competitors of the respondent are many corporations, individuals, and partnerships who sell and distribute in New Jersey and in said commerce between and among the various other States of the United States household furniture manufactured and having its origin in the city of Grand Rapids, State of Michigan, and others selling and distributing household furniture not having been manufactured in or having its origin in the city of Grand Rapids, and who do not misrepresent their business nor the quality or origin of their household furniture.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said furniture, respondent employs and displays, and for more than 5 years last past has employed and displayed in its corporate name, in signs on the building in which its business is located, and upon its stationery and invoices, and in other ways, the words "Grand Rapids." Respondent has further repre-

mented by advertisements appearing in newspapers and other periodicals or advertising media of general circulation, the following:

Grand Rapids Furniture Co., Inc.

Grand Rapids Furniture Presents Endure for Many a Christmas to Come!

PAR. 4. The city of Grand Rapids, Mich., has been for many years and is now a large and important center of the furniture industry in the United States, a fact generally known to the public throughout the United States, and furniture manufactured there has for many years enjoyed and now enjoys a widespread popularity, reputation, good will, and demand throughout the United States as possessing dependable quality and other desirable characteristics. By reason of the widespread reputation, popularity, and good will enjoyed by furniture made in Grand Rapids, Mich., throughout the United States, there is a substantial portion of the purchasing public which prefers to purchase household furniture manufactured in the city of Grand Rapids, believing that in so doing it secures a superior quality and other advantages not ordinarily obtainable in furniture manufactured and originating in places other than Grand Rapids, Mich.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent has represented that the furniture sold by it is manufactured in Grand Rapids, Mich., and that the respondent deals exclusively in furniture manufactured and originating in the city of Grand Rapids, Mich.

PAR. 6. The aforesaid representations made by respondent are false and misleading. In truth and in fact, only a very small portion of the furniture sold by respondent is made in Grand Rapids, Mich. The respondent, in truth and in fact, sells furniture manufactured and originating generally in cities other than the city of Grand Rapids, Mich.

PAR. 7. The use of the words "Grand Rapids" in the corporate name of the respondent "Grand Rapids Furniture Co., Inc." and the representations made in its advertising, directly or by inference, that it deals exclusively in furniture manufactured and originating in the city of Grand Rapids, Mich., 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 furniture purchased from the said respondent is made in Grand Rapids, Mich.; and as a result of such belief, so engendered the public is induced to purchase substantial quantities of furniture from respondent, thereby unfairly diverting to respondent trade from its said competitors in commerce between and among the several States of the United States and in

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the District of Columbia who do not use the same or equivalent methods; to exclude from the furniture trade competitors in said commerce who do not use the same or equivalent methods of advertising; and to lessen competition in said furniture business and to deprive the purchasing public of the benefit of free competition in the furniture trade. The use of the said methods in the State of New Jersey by the respondent has a direct, burdensome, and retarding effect upon the normal flow of interstate commerce in furniture manufactured and originating in the city of Grand Rapids, Mich., heretofore described, moving from other States of the United States into the State of New Jersey, by reducing shipments of such furniture in interstate commerce to the State of New Jersey, retarding the normal increase in volume of such goods shipped in interstate commerce to the State of New Jersey, and in some instances causing a complete cessation of interstate movement of said Grand Rapids furniture sought to be shipped in interstate commerce to the State of New Jersey. The use of said methods by respondent has a tendency and capacity to eliminate from the furniture trade in the State of New Jersey all actual competitors from the city of Grand Rapids, Mich., who sell their furniture in the State of New Jersey and to exclude therefrom competitors who do not adopt and use said methods or equivalent methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 11, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Grand Rapids Furniture 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 that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission (no testimony or other evidence in opposition thereto being offered by the respondent), before 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

answer thereto, 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. The respondent, Grand Rapids Furniture Co., Inc., is a corporation organized and existing under the laws of the State of New Jersey, with its office and place of business located at 300-302 Monroe Street, Passaic, N. J. Respondent is now and since the year 1925 has been engaged in the sale and distribution of household furniture.

PAR. 2. In the course and conduct of its business the respondent sells and has sold its furniture to purchasers located in States of the United States other than the State of New Jersey, and causes and has caused its furniture, when sold, to be transported from its place of business in the State of New Jersey to such purchasers located in other States.

PAR. 3. In the sale and distribution of its furniture the respondent is now, and at all times mentioned herein has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of household furniture in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its furniture, respondent has advertised its furniture by various means, including the distribution of advertising circulars among prospective purchasers and the insertion of advertisements in newspapers having a circulation not only in the State of New Jersey but in other States of the United States as well. Respondent has also advertised, to a limited extent, by means of radio continuities broadcast from a radio station located in Jersey City, N. J.

In respondent's advertising the words "Grand Rapids" and "Grand Rapids Furniture" have been prominently displayed. While these words have usually been employed only as a part of and in connection with respondent's corporate name, they have occasionally been used separately and independent of the corporate name. For example, one newspaper advertisement in December 1940 contained, at the top thereof, the statement in prominent type, "Grand Rapids Furniture presents endure for many a Christmas to come." At the bottom of this advertisement the corporate name also appeared.

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PAR. 5. Through the use of these advertisements, including the use of the words "Grand Rapids" in its corporate name, the respondent has represented that the furniture offered for sale and sold by it, or the major portion thereof, is manufactured in the city of Grand Rapids, Mich.

PAR. 6. In the early days of its business operations, respondent did purchase the major portion of its furniture from manufacturers located in Grand Rapids, Mich., but beginning about 1930 the proportion of such furniture sold by respondent declined rapidly, and this decline has continued down to the present time. During recent years, respondent has obtained only a very small proportion of its furniture, not over 5 percent, from Grand Rapids. The remaining 95 percent is obtained from various sources throughout the United States. None of the specific articles of furniture referred to in the advertisements mentioned above were in fact manufactured in Grand Rapids.

PAR. 7. For many years the city of Grand Rapids, Mich., has been known not only in the trade but to the purchasing public generally as a large and important center of the furniture industry. Furniture manufactured in Grand Rapids enjoys a distinct reputation for quality, style, and other desirable characteristics, and by reason of such reputation there is a preference on the part of a substantial portion of the purchasing public for such furniture. The record discloses that, when undertaking to sell furniture which is in fact manufactured in Grand Rapids, dealers frequently use successfully as a selling point the fact that the furniture is Grand Rapids furniture.

PAR. 8. The Commission finds that the use by the respondent of the representations herein referred to, including the use of the words "Grand Rapids" in respondent's corporate name, 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 furniture is manufactured in Grand Rapids, Mich., and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's furniture as a result of such erroneous and mistaken belief. In consequence thereof, substantial trade has been diverted to the respondent from its competitors, among whom are those who do not misrepresent the place of origin of their products.

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 the respondent, testimony and other evidence taken before a 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 by respondent), the 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Grand Rapids Furniture 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 respondent's furniture in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Grand Rapids," or any simulation thereof, as a part of respondent's corporate name.
2. Using the words "Grand Rapids," or any simulation thereof, to designate, describe, or refer to furniture which is not in fact manufactured in Grand Rapids, Mich.
3. Misrepresenting in any manner the place of origin or manufacture of respondent's furniture.

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

INCOME AUDIT SERVICE CORPORATION AND
FRANK H. HIBBERDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4715. Complaint, Feb. 25, 1942—Decision, July 13, 1942*

Where a corporation and its principal stockholder who controlled its practices and policies, engaged in the compilation and interstate sale and distribution of their "Income Audit Service" or bookkeeping and accounting or business record system, consisting of a bound ledger for recording business transactions, and of a certificate of service wherein they agreed, upon request, that they would prepare the Federal income tax returns of purchasers of said service and advise them with regard to income, Social Security, and other accounting questions; through the medium of the mails and through their salesmen and canvassers, directly and by implication—

- (a) Falsely represented that their said representatives were officers, agents, or representatives of the United States Government, and, in particular, of the Income Tax Unit of the Treasury, and that the purchase and use of a bookkeeping, accounting, or record system, and more particularly their own, was required under the laws of the Government or the rules, regulations, or orders of some department or agency thereof;
- (b) Falsely represented that their Income Audit Service emanated from, or was sold and distributed under the auspices of, the Government or said Income Tax Unit, that it was the only bookkeeping, accounting, or business record system approved by the Government or said Unit, and that all others in use must be removed and replaced by their own; and
- (c) Falsely represented that prospective purchasers who failed to purchase and use their said "Income Audit Service" and did not comply with requests or demands of their representatives or salesmen in connection with its sale would, as a result, subject themselves to arrest or imprisonment;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, thereby causing it, because of such mistaken belief, to purchase substantial quantities of said "Income Audit Service":

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. John N. Torvestad, of Brentwood, Md., and *Mr. Hyman M. Goldstein*, 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 Income Audit Service Corporation, a corporation, and Frank H. Hibberd, individually and as an officer of said Income Audit Service 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, Income Audit Service Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland. Respondent, Frank H. Hibberd, is an individual and is the principal stockholder in and an officer of respondent Income Audit Service Corporation and controls and dominates the practices and policies of the corporate respondent.

Both of the respondents have their office and place of business at 3407 Perry Street, Mount Rainier, Md.

PAR. 2. The respondent corporation is now, and for more than one year last past has been, under the supervision and control of said respondent, Frank H. Hibberd, engaged in the compilation of a so-called "Income Audit Service" and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

Respondents have acted together and in cooperation each with the other in doing the acts and things alleged hereinafter.

Respondents cause and have caused said "Income Audit Service," when sold, to be shipped from said place of business in Maryland to the purchasers thereof located in the various States of the United States other than Maryland and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in the said "Income Audit Service" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said "Income Audit Service" comprises a bookkeeping and accounting or business records system consisting of a bound record for recording various business transactions. Included in said "Income Audit Service" is a certificate of service, wherein respondents, upon request, agree to prepare the federal income tax return of purchasers of said "Income Audit Service" and to advise subscribers with regard to income, social security tax, and other accounting questions.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said "Income Audit Service," respondents directly, indirectly, impliedly, and inferentially, through the medium of the United States mails and through methods used by representatives, salesmen, agents, and canvassers under their direction,

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control, and supervision, have made many representations to purchasers and prospective purchasers in the solicitation and sale of said "Income Audit Service," among and typical of which are the following:

1. That respondents' representatives, salesmen, agents, and canvassers are officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury.

2. That the purchase and use of a bookkeeping, accounting, or business record system, and, more particularly, of respondents' said "Income Audit Service," is necessary or required under the laws of the United States or under the rules, regulations, or orders of some department or agency thereof.

3. That respondents' "Income Audit Service" emanates from or is sold and distributed under the auspices of the United States Government or the aforementioned Income Tax Unit.

4. That respondents' said "Income Audit Service" is the only bookkeeping, accounting, or business record system approved by the United States Government or said Income Tax Unit, and that all other systems or services in use must be removed and replaced by respondents' said "Income Audit Service."

5. That prospective purchasers who fail to purchase and use respondents' said "Income Audit Service" or who do not comply with the requests or demands of respondents' representatives, salesmen, agents, or canvassers as made by them in connection with the sale of respondents' said "Income Audit Service" will as a result of such failure to purchase and use said service and of noncompliance with the demands of such representatives, salesmen, agents, or canvassers, subject themselves to arrest or imprisonment.

PAR. 5. The said representations as made by respondents in the manner and method as hereinabove set out in paragraph 4 are false, misleading, and deceptive. In truth and in fact, respondents' representatives, agents, salesmen, and canvassers are not officers or agents of, nor are they in any manner connected with, the United States Government, the Income Tax Unit of the Department of the Treasury, or any other department or agency of the United States Government. Respondents' said "Income Audit Service" is not necessary or required under the laws of the United States or under the rules, regulations, or orders of the Income Tax Unit of the Department of the Treasury, or any other department or agency of the United States Government. Respondents' "Income Audit Service" does not emanate from, nor is it sold and distributed under the auspices of, the United

States Government, or any department or agency thereof. In fact, no other bookkeeping, accounting, or business record system purchased or in use need be removed and replaced by respondents' said "Income Audit Service." Prospective purchasers who do not purchase and use said "Income Audit Service" or comply with the request or demand made by respondents' representatives, salesmen, agents, and canvassers in connection with the sale of respondents' "Income Audit Service" will not, as a result of such failure to purchase and use said "Income Audit Service" or comply with the request or demand of said representatives, salesmen, agents, and canvassers, be subject to arrest or imprisonment.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to cause the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said "Income Audit Service."

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 ORDER¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 25, 1942, issued and subsequently served its complaint in this proceeding upon respondents, Income Audit Service Corporation, a corporation, and Frank H. Hibberd, individually and as an officer of said Income Audit

¹ The findings as to the facts are published as modified by order dated October 23, 1942, as follows:

This matter coming on to be heard by the Commission upon respondents' motion to delete the word "directly" from line four, paragraph 4, page 3, of the Findings as to the Facts and certain other words from the Order to Cease and Desist, and it appearing that respondents' motion is well founded insofar as it relates to the deletion of the word "directly" from line 4 of paragraph 4 of the Findings as to the Facts, but is not well founded insofar as it involves the deletion of certain words from the Order to Cease and Desist, and the Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the Findings as to the Facts issued herein on July 13th, 1942, be, and they hereby are, modified to the extent of deleting from line four of paragraph 4 of said Findings the word "directly"; and that in all other respects the Findings as to the Facts and Conclusion issued by the Commission on July 13th, 1942, remain in full force and effect.

It is further ordered, That the motion to delete from the Order to Cease and Desist issued on July 13th, 1942, certain words, to wit, "directly or through any corporate or other device" and the words "directly or by implication" be, and the same hereby is, denied.

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Service Corporation, charging them with unfair and deceptive acts and practices in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, at a hearing before an examiner of the Commission theretofore duly designated by it, a stipulation as to the facts was read into the record and certain documentary evidence introduced in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and it was agreed that the Commission may proceed upon said statement of facts and documentary evidence to make 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. The respondents 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, stipulation as to the facts, and documentary evidence; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Income Audit Service Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland. Respondent, Frank H. Hibberd, is an individual, and is the principal stockholder in and an officer of respondent Income Audit Service Corporation, and controls and dominates the practices and policies of the corporate respondent. Both of the respondents have their office and place of business at 3407 Perry Street, Mount Rainier, Md.

PAR. 2. The respondent corporation, under the supervision and control of said respondent, Frank H. Hibberd, is now and for more than 1 year last past has been engaged in the compilation of a bookkeeping system of service sold under the trade name "Income Audit Service," and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondents have acted together and in cooperation each with the other in doing the acts and things hereinafter set out.

Respondents cause and have caused said "Income Audit Service," when sold, to be shipped from said place of business in Maryland to the purchasers thereof located in the various States of the United States other than Maryland and in the District of Columbia. Re-

spondents maintain and at all times mentioned herein have maintained a course of trade in the said "Income Audit Service" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said "Income Audit Service" includes a bookkeeping and accounting or business records system consisting of a bound ledger for recording various business transactions. Purchasers of said "Income Audit Service" are also furnished a certificate of service, wherein respondents agree that, upon request, they will prepare the Federal income tax return of purchasers of said "Income Audit Service" and advise purchasers with regard to income, Social Security tax, and other accounting questions.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said "Income Audit Service," respondents directly, indirectly, impliedly and inferentially, through the medium of the United States mails and through methods used by representatives, salesmen, agents, and canvassers under their direction, control, and supervision, have made many representations to purchasers and prospective purchasers in the solicitation and sale of said "Income Audit Service," among and typical of which are the following:

(a) That respondents' representatives, salesmen, agents, and canvassers are officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury.

(b) That the purchase and use of a bookkeeping, accounting, or business record system, and, more particularly, of respondents' said "Income Audit Service," is necessary or required under the laws of the United States or under the rules, regulations, or orders of some department or agency thereof.

(c) That respondents' "Income Audit Service" emanates from or is sold and distributed under the auspices of the United States Government or the aforementioned Income Tax Unit.

(d) That respondents' said "Income Audit Service" is the only bookkeeping, accounting, or business record system approved by the United States Government or said Income Tax Unit, and that all other systems or services in use must be removed and replaced by respondents' said "Income Audit Service."

(e) That prospective purchasers who fail to purchase and use respondents' said "Income Audit Service" or who do not comply with the requests or demands of respondents' representatives, salesmen, agents, or canvassers as made by them in connection with the sale of respondents' said "Income Audit Service" will, as a result of such

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failure to purchase and use said service and of noncompliance with the demands of such representatives, salesmen, agents, or canvassers, subject themselves to arrest or imprisonment.

PAR. 5. The said representations as made by respondents in the manner and method as hereinabove set out in paragraph 4 are false, misleading, and deceptive. In truth and in fact, respondents' representatives, agents, salesmen, and canvassers are not officers or agents of, nor are they in any manner connected with, the United States Government, the Income Tax Unit of the Department of the Treasury, or any other department or agency of the United States Government. Respondents' said "Income Audit Service" is not necessary or required under the laws of the United States or under the rules, regulations, or orders of the Income Tax Unit of the Department of the Treasury or any other department or agency of the United States Government. Respondents' "Income Audit Service" does not emanate from nor is it sold and distributed under the auspices of the United States Government or any department or agency thereof. In fact, no other book-keeping, accounting, or business record system purchased or in use need be removed and replaced by respondents' said "Income Audit Service." Prospective purchasers who do not purchase and use said "Income Audit Service" or comply with the request or demand made by respondents' representatives, salesmen, agents, and canvassers in connection with the sale of respondents' "Income Audit Service" will not, as a result of such failure to purchase and use said "Income Audit Service" or comply with the request or demand of said representatives, salesmen, agents, and canvassers, be subject to arrest or imprisonment.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to cause the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said "Income Audit Service."

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 stipulation as to

the facts entered into by and between counsel for the Commission and counsel for the respondents upon the record; 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, Income Audit Service Corporation, its officers, representatives, agents, and employees, and Frank H. Hibberd, individually and as an officer of said Income Audit Service Corporation, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a bookkeeping system or service sold and distributed under the name, "Income Audit Service," or any bookkeeping, accounting, or business record system whether sold under the name, "Income Audit Service" or any other name in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents' agents, salesmen, or canvassers are officers, agents, or representatives of, or that they are in any manner connected with, the United States Government or any department or agency thereof.

2. That respondents' bookkeeping, accounting, and business record system or "Income Audit Service" is necessary or required under the laws of the United States or under the rules, regulations, or orders of any department or agency thereof; or that other income tax record systems or services must be replaced by respondents' said system or service.

3. That respondents' bookkeeping, accounting, and business record system or "Income Audit Service" is produced by or sold and distributed under the direction of the United States Government or any department or agency thereof.

4. That prospective purchasers who fail to purchase and use respondents' said "Income Audit Service" or record keeping system will be subject to arrest or imprisonment because of their failure to purchase and use said services.

It is further ordered, That 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
MAR-GOL HEALTH PRODUCTS CORP.

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

Docket 4607. Complaint, Oct. 7, 1941—Decision, July 14, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of its "Roberta Blueberry Juice," made from the Florida "Rabbit-Eye Blueberry" by means of advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature—

(a) Represented, directly and by implication, that its said Blueberry Juice had therapeutic value in the treatment of stomach disorders, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, menstruation difficulties, and diabetes;

The facts being it was nothing more than a beverage with a food value limited to that of the berries from which the juice was extracted; it had no therapeutic value in the treatment of stomach disorders and other ailments above mentioned; and reliance thereon as a treatment for diabetes might be very dangerous through causing a patient to refrain from taking proper treatment, particularly insulin;

(b) Represented in certain of its advertising that its product contained essential organic mineral elements such as iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur, and calcium, by reason of which it was of value in maintaining general health;

(c) Represented, directly and by implication, that it was a builder and cleanser of red blood, a flushing agent which promoted cell and tissue metabolism, had great healing power and resistance-building properties, was beneficial for nerve matter, especially the heart nerve, promoted cell building and blood fluidity, acted on the glands, and made body fluid alkaline; and

(d) Represented further, as aforesaid, that it beneficially affected maintenance of mucous and other gland secretions; that it entered into sensitive tissues, ligaments, and arterial walls, was a powerful antiseptic and would increase energy; and was effective in stimulating the liver, promoting bile flow, beautifying the complexion, in bone and teeth building, and tissue repair;

The facts being it contained no organic mineral elements in sufficient quantities to supply any mineral deficiency; and did not have the properties, and would not accomplish the results claimed therefor as above set forth; and

(e) Falsely represented that it was effective as a tonic, eliminator, alkalizer, body builder, regulator, and as an antiseptic and beautifier;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing purchase of substantial quantities of said product 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. Arthur F. Thomas*, trial examiner.

Mr. Joseph C. Fehr and *Mr. Carrel F. Rhodes* for the Commission.

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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 Mar-Gol Health Products 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, Mar-Gol Health Products Corporation, is a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business located at 203 North Humphrey Avenue in the city of Oak Park, in the State of Illinois.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a product designated as "Roberta Blueberry Juice," 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 Illinois to purchasers thereof located in various States of the United States and the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product 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 products, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning

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its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

- Drink Roberta Blueberry Juice * * * as a body builder * * *;
- Beneficial for sour stomach, ulcer, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis (sic), anemia, arthritis, liver trouble and menstruation difficulties * * *. Highly recommended for starch restricted diet cases;
- Roberta Blueberry Juice * * * contains essential organic mineral elements * * * iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur and calcium;
- It's pleasant to have your health restored with Roberta Blueberry Juice, a natural health food— * * *;
- Learn the secret of health . . . Get well and stay well. Drink Roberta Blueberry Juice;
- These blueberries, luscious and unsurpassed in therapeutic, health restorative value;
- Use as a tonic, purifier, eliminator, alkalizer, builder, regulator, antiseptic, beautifier;
- A flushing agent, promotes cell and tissue metabolism, has great healing power and builds resistance;
- Agent of life and growth. Beneficial for nerve matter. Especially upon the Heart nerve;
- Promotes cell building, blood fluidity, makes body fluid alkaline, acts on glands;
- Is responsible for the maintenance of mucus and gland secretions;
- Enters into sensitive tissues, ligaments, arterial walls. It's a powerful antiseptic, it increases energy;
- Stimulates the liver, promotes bile flow, and beautifies the complexion;
- Essential and is responsible for bone and teeth building and tissue repair;
- A red blood builder and cleanser.

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 food and therapeutic properties of respondent's product, designated as "Roberta Blueberry Juice," respondent represents, directly and by implications, that said product is a body builder; that its use has a beneficial effect upon sour stomach, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, and menstruation difficulties; that it is highly effective and beneficial for use in cases of starch restricted diet; that it contains essential organic mineral elements, including the mineral elements of iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur, and calcium; that it is a natural health-restoring food; that its use is the secret of getting well and

staying well; that it is unsurpassed in therapeutic, health-restoring value; that it is a tonic, purifier, eliminator, alkalizer, builder, regulator, antiseptic, and beautifier; that it is a flushing agent which promotes cell and tissue metabolism, builds resistance and has great healing power; that it is an agent of life and growth which is beneficial for the nerves, and especially the heart nerve; that it promotes cell building, blood fluidity, makes body fluid alkaline, and acts on glands; that it is responsible for the maintenance of mucus and secretions; that it enters into sensitive tissues, ligaments, and arterial walls and increases energy; that it is a powerful antiseptic; that its use stimulates the liver, promotes bile flow, and beautifies the complexion; that its use is essential and that its use promotes bone, teeth building and tissue repair; and that it is a red blood builder and cleanser.

PAR. 5. The significant 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 product designated as "Robert's Blueberry Juice" is not a body builder and its use will not have a beneficial effect upon sour stomach, ulcer, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, and menstruation difficulties. Said product is not highly effective and beneficial for use in cases of starch restricted diet, and because of its sugar content, its use may be dangerous to the health of one suffering from diabetes or one whose diet is restricted in the use of starch. Said product does not contain, in significant amounts, the essential organic minerals, including iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur, and calcium. Said product is not a natural health-restoring food and its use is not the secret of getting well and staying well. Said product has no therapeutic or health restorative value in excess of its mild laxative properties. Said product is not a tonic, purifier, eliminator, alkalizer, builder, regulator, antiseptic, or beautifier; it is not a flushing agent and it does not promote cell and tissue metabolism; it has no value in building resistance and it has no healing power. Said product is of no significant value in promoting life and growth, nor is it beneficial for the nerves, including the heart nerve. Said product does not promote cell building, blood fluidity, nor does it make the body fluid alkaline, nor does it act on glands of the body. The use of said product will not be of any significant value in the maintenance of mucus and gland secretions. It will not enter into sensitive tissues, ligaments, and arterial walls, or increase energy in excess of the energy derived from its sugar content. It is not a powerful antiseptic;

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nor an antiseptic in any sense of the word. The use of said product will not stimulate the liver, promote bile flow, or beautify the complexion. Its use is not essential and will not materially promote bone and teeth building or tissue repair, nor is it a red blood builder or cleanser.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements with respect to its said product, disseminated as aforesaid, has had and now has 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 product.

PAR. 7. The 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 7, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Mar-Gol Health Products Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by J. C. Fehr, an attorney for the Commission, and in opposition to the allegations of the complaint by Martha S. Goll, vice president and treasurer of respondent corporation, before Arthur F. Thomas, 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 upon said complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs in support of the complaint and in opposition thereto, and oral argument before the Commission; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mar-Gol Health Products Corporation, is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 203 North Humphrey Avenue in the city of Oak Park, in the State of Illinois. Respondent is engaged in the manufacture and in the sale and distribution of a fruit-juice product designated as "Roberta Blueberry Juice," in commerce between and among the various States of the United States and in the District of Columbia. Respondent's blueberry juice is made from a type of blueberry known as "Rabbit-Eye Blueberry," which is grown by the respondent in the State of Florida and processed in the plant of the respondent located at Crest View, Fla. Respondent causes, and has caused, said product, when sold, to be transported from its place of business in the State of Illinois or from its processing plant in the State of Florida, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its product, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Drink Roberta Blueberry Juice as a body builder.

Beneficial for sour stomach, ulcer, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, and menstruation difficulties, as well as a complexion beautifier. Highly recommended for starch restricted diet cases.

Physicians recommend it highly for anemia, arthritis, diabetes, and ulcer.

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Roberta Blueberry Juice, a food containing essential organic mineral elements.

FRUIT IRON, a red blood builder, and cleanser.

FRUIT POTASSIUM, a flushing agent, promotes cell and tissue metabolism, has great healing power and builds resistance.

FRUIT PHOSPHORUS, agent of life and growth.

Beneficial for nerve matter, especially upon the heart nerve.

FRUIT MAGNESIUM promotes cell building, blood fluidity, makes body fluid alkaline, acts on glands.

FRUIT SODIUM is responsible for the maintenance of mucous and gland secretions.

FRUIT SILICON enters into sensitive tissues, ligaments, arterial walls. Is a powerful antiseptic, increases energy.

SULPHUR stimulates the liver, promotes bile flow, and beautifies the complexion.

CALCIUM, essential and is responsible for bone and teeth building and tissue repair.

Use as a tonic beautifier, eliminator, alkalizer, builder, regulator, antiseptic, beautifier.

These blueberries, luscious and unsurpassed in therapeutic, health-restorative value, are grown in Florida.

ROBERTA

A food containing essential organic mineral elements, such as calcium, magnesium, sodium, potassium, phosphorus, chlorine, sulphur, iron, and manganese.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represents, both directly and by implication, that its blueberry juice, designated "Roberta Blueberry Juice," has therapeutic value in the treatment of stomach disorders, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, menstruation difficulties, and diabetes.

In certain of its advertising disseminated as hereinabove set forth, the respondent represents that its product contains essential organic mineral elements, such as iron, potassium, phosphorus, magnesium, sodium, silicon, sulphur, and calcium, and that by reason of the existence of these organic mineral elements, its product has properties of value in maintaining the general health of the user of said product. In this connection the respondent represents, both directly and by implication, that its product is a builder and cleanser of red blood; that it is a flushing agent which promotes cell and tissue metabolism and has great healing power and resistance-building properties; that it is beneficial for nerve matter, especially upon the heart nerve; that it promotes cell building, blood fluidity, acts on the glands, and makes body fluid alkaline; that it has properties beneficially affecting maintenance of mucous and other gland secretions; that it enters into

sensitive tissues, ligaments, and arterial walls and is a powerful antiseptic and will increase energy; that it has properties effective in stimulating the liver, promoting bile flow, and beautifying the complexion; and that it has properties effective in bone and teeth building and tissue repair.

It is further represented by the respondent that the use of this product is effective as a tonic, eliminator, alkalizer, body builder, regulator, and as an antiseptic and beautifier.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. Respondent's blueberry juice is a fruit juice composed entirely of juice squeezed out of the leaves and berries, to which no sugar or other ingredients have been added. This fruit juice is nothing more than a beverage having a food value limited to that of the berries from which the juice is extracted. It has no therapeutic value in the treatment of stomach disorders, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, or menstruation difficulties.

Respondent's product contains an ingredient known as myrtillin, which is one of the natural dye substances contained in blueberries and also in the leaf of the plant. A number of years ago this ingredient was thought to have some beneficial value in the treatment of diabetes. However, subsequent research has developed that myrtillin has no therapeutic value in the treatment of diabetes and is not recognized as a therapeutic agent at the present time by competent medical authority.

There is no known cure for diabetes. The treatment consists of an effort to compensate for the power which the body has lost to regulate the blood sugar level by regulating the diet so that not too big a load is put upon the body at any one time in regard to the handling of sugar and by giving insulin to increase the body's power to handle sugar. There is no active ingredient in respondent's blueberry juice which has any therapeutic effect in diabetic cases or which might in any way supply or supplant the use of insulin. In fact, a reliance upon respondent's blueberry juice as a treatment for diabetes might be very dangerous, since reliance upon this product might cause a patient to refrain from taking proper treatment, particularly the use of insulin.

Respondent's product does not contain any organic mineral elements in quantities sufficient to supply any mineral deficiency or to accomplish any of the results claimed for this product by the respondent. It is not a builder and cleanser of red blood or a flushing agent which promotes cell and tissue metabolism and does not have great healing power or resistance-building properties. The use of this product is not bene-

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ficial for nerve matter or the heart nerve, and it will not promote cell building, blood fluidity, or make the body fluid alkaline. It does not have any beneficial action on the glands and has no properties which beneficially affect maintenance of mucous and other gland secretions. This product is not a powerful antiseptic, will not increase energy, or enter into sensitive tissues, ligaments, and arterial walls. This product has no properties effective in stimulating the liver, promoting bile flow, or beautifying the complexion and is of no value in bone and teeth building or tissue repair.

Respondent's product is not effective as a tonic, eliminator, alkalizer, body builder, or regulator and has no value as an antiseptic or beautifier.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements with respect to its said product, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's 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 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, 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 in support of the complaint and in opposition thereto, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mar-Gol Health Products Corp., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connec-

tion with the offering for sale, sale, or distribution of its fruit juice product known as "Roberta Blueberry Juice," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly,

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(a) That respondent's product has any properties or value other than that of a beverage having a food value limited to that of the blueberries from which the juice is extracted,

(b) That respondent's product has any therapeutic value in the treatment of stomach disorders, ulcers, constipation, accumulation of impurities, impaired digestion, intestinal bleeding, acidosis, anemia, arthritis, liver trouble, or menstrual disorders,

(c) That respondent's product has any therapeutic value in the treatment of diabetes,

(d) That respondent's product contains any organic mineral elements in quantities sufficient to supply any mineral deficiency,

(e) That respondent's product is a builder and cleanser of red blood, or that it is a flushing agent which promotes cell and tissue metabolism, or that it has great healing power or resistance-building properties,

(f) That respondent's product is beneficial for nerve matter, especially upon heart nerves, or that it promotes cell building, blood fluidity, or makes body fluid alkaline,

(g) That respondent's product acts on the glands or that it has properties beneficially affecting maintenance of mucous and other gland secretions,

(h) That respondent's product enters into sensitive tissues, ligaments, and arterial walls, or is a powerful antiseptic, or that it will increase energy,

(i) That respondent's product has properties effective in stimulating the liver, promoting bile flow, beautifying the complexion, building bone and teeth, or in repairing tissue,

(j) That the use of respondent's product is effective as a tonic, eliminator, alkalizer, body builder, regulator, or as an antiseptic or beautifier;

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 respond-

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ent's product, 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

JACOB SWIMMER, DOING BUSINESS AS NATIONAL
LACQUER MANUFACTURING CO. AND NATIONAL
TITANIUM CO.

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

Docket 4088. Complaint, Apr. 12, 1940—Decision, July 20, 1942¹

Where an individual, engaged in the interstate sale and distribution of reconditioned paint which he obtained as waste or salvage material resulting from use of a spray gun by manufacturers of automobiles, electric refrigerators, and other metal products, and reclaimed through the adding of solvents and removal of impurities—

- (a) Represented, by means of sales letters and advertising circulars which were given wide distribution, that the regular and customary price of his paint was \$3.65 per gallon, and that the quoted price thereof of \$1.55 constituted a special, reduced, and sacrifice price;

The facts being said last figure was his usual and customary selling price, and while the manufacturing concerns from whom he obtained his waste material might have paid approximately the higher price for the original paint, he never sold his reconditioned product at any price approaching such figure;

- (b) Represented that he maintained warehouses at numerous points throughout the United States, one of which was located near the prospective purchaser, and that the quantity of paint available from such warehouse at the quoted price was limited to the specific amount mentioned in his letter;

The facts being he had no warehouses other than that maintained by him in Vernon, Calif., in connection with his processing plant, from which he customarily filled the order, and it was only in exceptional cases that he was able to fill an order with a quantity of paint already in the purchaser's vicinity; and contrary to the implications in his said letter referring to "100 gallons" or some other specific amount, he was prepared to and did fill all orders received, at said purported "sacrifice price";

- (c) Falsely represented that his said product was "fresh stock" made entirely from new and unused materials, and obtained direct from the original manufacturer; and

- (d) Failed to reveal, either in his letters or other advertising material or on the labels affixed to the containers, that said product was reclaimed and reconditioned;

With tendency and capacity to mislead and receive a substantial portion of the purchasing public with respect to the nature and value of said product, thereby causing it to purchase substantial quantities thereof as a result of such mistaken belief;

¹ Modified order, published herewith, was made as of September 18, 1942.

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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 P. Bramhall* and *Mr. Edward E. Reardon*, trial examiners.

Mr. Clark Nichols and *Mr. Randolph W. Branch* for the Commission.

Mr. Samuel P. Novick and *Mr. G. V. Weikert*, of Los Angeles, Calif., and *Mr. Henry E. Mangham*, 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 *Jacob Swimmer*, an individual, trading under the name, National Lacquer Manufacturing Co., and under the name National Titanium 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, *Jacob Swimmer*, is an individual trading and doing business under the name and style of "National Lacquer Manufacturing Co." and under the name and style of "National Titanium Co." with his principal office and place of business located at 123-131 Eleventh Street, in the city of Brooklyn, State of New York. Respondent now is, and for more than 2 years last past has been, engaged in the sale and distribution of paint and paint products 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 and users thereof located in various States of the United States other than in the State of New York, and in the District of Columbia.

PAR. 2. In the course of conduct of said business and for the purpose of inducing the purchase of said products, it has been and is the practice of respondent to mail letters and advertising literature to purchasers and prospective purchasers located in various States of the United States and in the District of Columbia, and therein to make representations with respect to the price, quality, and manu-

facture of said products and with respect to the life and status of respondent's business. Typical of said representations so made, among others, are the following:

In a warehouse near you, we have 100 gallons of *Genuine Synthetic Outside White Paint*, in five gallon steel buckets, guaranteed to be in perfect condition which we will sacrifice for \$1.55 per gallon, delivered.

This material was originally manufactured by the world's largest synthetic paint maker and is positively fresh stock, regularly priced at \$3.65 per gallon. We procured this lot when we bought out a large manufacturing plant. Its unusual high quality makes it ideal for indoor and outdoor structural maintenance on wood, metal, concrete or over old paint.

It covers solid in one coat, brushes or sprays on easily and dries hard overnight to a beautiful finish. Endures severest exposure without cracking, chipping or flaking and lasts practically a lifetime. May be tinted with all oil colors and thinned with turpentine or benzine.

So sincere are we with this offer that we are willing to extend four months credit on this material with the distinct understanding that unless it exceeds your expectations in every way, you may return the entire quantity at any time and we will pay freight both ways and not charge you for what you've used.

Through and by means of the foregoing statements, and others of similar import and meaning, it has been and is the practice of respondent to represent and imply, among other things, that the regular and customary price of the said paint product is \$3.65 per gallon and that it is being offered for sale and will be sold at a sacrifice price of \$1.55 per gallon; that respondent maintains warehouses at points other than his place of business and at places near or in the vicinity of the solicited prospective purchasers, in which a certain specified number of gallons of said product will be available, and that respondent has been in business for over half a century, that the product is fresh stock, implying that the ingredients used in its manufacture are fresh, unused materials; that the product is direct from the original paint manufacturer and that this paint manufacturer is the world's largest synthetic paint maker; that his product is purchased from the said world's largest synthetic paint manufacturer.

PAR. 3. The aforesaid statements and representations are false, misleading, and deceptive in that the usual, regular, and customary price of the said paint product is not \$3.65 per gallon, but is \$1.55 per gallon, the price at which it has been and is offered for sale and regularly sold by respondent. The respondent maintains no warehouses other than the warehouse located at his place of business in Brooklyn, N. Y., and at no time has had any quantity of paint available to prospective purchasers in any warehouse other than his

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warehouse as aforesaid and not at points near or in the vicinity of the recipients of the said letters and advertising literature. Respondent has not been in business for half a century or for any comparable length of time. Respondent's product is not fresh stock but is made from waste paint which has been lost in the process of the application of the original fresh stock on refrigeration boxes and other surfaces, which is recovered and sold to respondent who reconditions and redissolves it into the product herein described; respondent's product is not direct from the original manufacturer of synthetic paint as it has been used before it was received by respondent. The aforesaid statements of the respondent and all other advertising material used by him are false and misleading in that they fail to disclose that his said product is a reconditioned, redissolved paint product.

PAR. 4. The use by the respondent of the foregoing false and misleading representations and implications respecting his said product as to its price, quality, manufacture, and location, and the failure to disclose in said advertising that his said product is a reconditioned paint, 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 said representations and implications are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous beliefs, 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.

Since the date of the issuance of the original complaint herein, respondent has transferred his place of business from 123-131 Eleventh Street, Brooklyn, N. Y., to 2330 East Thirty-seventh Street, Vernon, Calif. From this address respondent, in the course and conduct of his business, has mailed letters to the various States of the United States. Said letters, in addition to containing all the false and misleading statements and representations hereinbefore recited, bear the following letterhead or inscription: "National Titanium Company. Pacific Coast Division." Respondent thus represents that his office at Vernon, Calif., is but one branch or division of his business, and that he has other branches or divisions in various sections of the United States.

The representations thus made by the respondent are false and untrue. Respondent's only place of business is located at Vernon,

Calif., and respondent has no branch or division in other sections of the country.¹

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 12, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Jacob Swimmer, an individual trading as National Lacquer Manufacturing Co. and as National Titanium Co., charging him 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, a hearing was held on August 13, 1940, before a trial examiner of the Commission theretofore duly designated by it, at which hearing the attorney for the Commission served notice upon the respondent, who was present, that an amendment to the complaint would be sought, which amendment would raise certain issues not included in the original complaint. The proposed amendment was dictated into the record at the hearing. No objection being offered by the respondent to the amending of the complaint, the attorney for the Commission proceeded to introduce testimony and other evidence in support of the allegations of the complaint and of the proposed amendment, and the respondent offered testimony and other evidence in opposition thereto. Subsequently, the Commission on April 23, 1941, entered its order amending the complaint in conformity with the announcement made by the Commission's attorney at the hearing, and directing that the evidence introduced at the hearing on August 13, 1940, be consid-

¹ Complaint was amended by the addition of the above two paragraphs by order amending complaint dated April 23, 1941, as follows:

This matter coming on to be heard by the Commission upon the motion of Richard P. Whiteley, Assistant Chief Counsel for the Commission, for an amendment to the complaint herein, and the Commission having duly considered said motion and the record herein.

And it appearing to the Commission that at a hearing in this case in Los Angeles, Calif., on August 13, 1940, the Commission's trial attorney announced his intention to seek an amendment to said complaint and dictated the proposed amendment into the record, the language of such proposed amendment being identical with that set forth in the motion of the Assistant Chief Counsel.

And it further appearing to the Commission that the respondent was present in person at said hearing when said announcement was made by the Commission's trial attorney and when said proposed amendment was dictated into the record and that the respondent offered no objection to the amending of the complaint as proposed by the Commission's trial attorney.

And it further appearing that issue was joined at said hearing upon the charges set forth in said proposed amendment, and that testimony in support of said charges was introduced by the Commission's trial attorney and in opposition to such charges by the respondent.

It is therefore ordered, That the motion of the Assistant Chief Counsel be granted and that the complaint herein be, and it is hereby, amended by adding thereto the following: [Here follow the two paragraphs hereinbefore set out at the end of the complaint].

Findings

ered a part of the record to the same effect as though such amendment had been made by the Commission prior to such hearing.

Thereafter, on June 2, 1941, and June 3, 1941, additional hearings were held before a trial examiner of the Commission theretofore duly designated by it, at which hearings further testimony and other evidence were introduced in support of and in opposition to the allegations of the complaint as amended, the respondent being present at these hearings and being represented also by counsel. Subsequently, the proceeding regularly came on for final hearing before the Commission on the complaint as amended, the answer of the respondent, testimony, and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed on behalf of the 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, Jacob Swimmer, is an individual trading and doing business under the name of National Lacquer Manufacturing Co., and also under the name of National Titanium Co. For several years immediately preceding January 1940, respondent's office and place of business was located at 123-131 Eleventh Street, Brooklyn, N. Y. In January 1940, respondent moved to Vernon, Calif., where he opened an office and place of business at 2330 East Thirty-seventh Street. While it appears that a short period of time elapsed before all of respondent's business operations could be transferred from Brooklyn to his new place of business in Vernon, Calif., all of such operations in Brooklyn had been discontinued by May 1940. Since that time respondent has maintained no office or place of business other than that located in Vernon, Calif.

PAR. 2. Respondent is engaged in the reclaiming and reconditioning of paint, and in the sale and distribution thereof. In the course and conduct of his business respondent sells and has sold his product to purchasers located in various States of the United States and in the District of Columbia, and causes and has caused his product, when sold, to be transported from his place of business in the State of New York or the State of California to the purchasers thereof located in such other States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his product 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 his business and for the purpose of inducing the purchase of his product, respondent follows the practice of addressing sales letters to numerous prospective purchasers. Typical of such letters is one addressed to a business concern in Dallas, Texas, in April 1939, which read as follows:

In a warehouse near you, we now have 100 gallons of high grade *Genuine Outside White Paint* in five gallon steel buckets, guaranteed to be in perfect condition which we will sacrifice for \$1.55 per gallon, delivered.

This material was originally manufactured by the world's largest paint maker and is positively fresh stock, regularly priced at \$3.65 per gallon.

Its unusual high quality makes it ideal for inside and outside painting on walls, woodwork, ceilings, floors, fences, exterior structures, window frames, brick, concrete, over old paint and metal surfaces. It covers *solid* in one coat, brushes or sprays easily and dries over night to a smooth finish. Endures severest exposure without cracking, chipping or flaking and lasts practically a lifetime.

It may be tinted with ordinary oil colors and thinned with turpentine.

So sincere are we with this offer that we are willing to extend six months credit on this material with the distinct understanding that unless it exceeds your expectations in every way, you may return the entire quantity at any time and we will pay freight both ways and not charge you for what you've used.

May we have your order for all or any *part* of this material by return mail?

In addition to the use of individual letters addressed to specific prospective purchasers, respondent also makes use of advertising circulars, which are given wide distribution among prospective purchasers throughout the country. These circulars contain in substance much of the same material used in the letters.

Both the letters and circulars used by respondent have imprinted thereon, in connection with respondent's trade name, the legend, "Warehouses—Principal Cities."

PAR. 4. Through the use of these representations and others of similar import, respondent represents, directly or by implication, that the regular and customary price of his paint is \$3.65 per gallon and that the quoted price of \$1.55 per gallon constitutes a special, reduced, and sacrifice price; that respondent maintains warehouses at numerous points throughout the United States, one of which is located near the prospective purchaser, and that the quantity of paint available to the prospective purchaser from such adjacent warehouse at the quoted price is limited to the specific amount mentioned in respondent's letter; that respondent's paint is fresh stock, being made entirely of new and unused materials; and that the paint is obtained by respondent direct from the original paint manufacturer.

PAR. 5. Respondent obtains his paint from manufacturers of automobiles, electric refrigerators, and other metal products on which

paint is used. Such manufacturers usually paint their products by spraying the paint on with the aid of a spray gun. During the process of spraying the paint, a substantial proportion of it rebounds and collects on plates and in trays and troughs in the booth or room where the painting process takes place. This waste or salvage material is subsequently gathered up by the manufacturer and placed in barrels or other containers. Upon obtaining the material, respondent subjects it to certain processes which include, among other things, the adding of necessary solvents and the removal of certain impurities. It is this reclaimed and reconditioned products which respondent sells. He does not obtain any of his paint from paint manufacturers.

Neither in his letters or other advertising material, nor on the labels affixed to the containers in which his product is sold, does respondent disclose that his paint is a reclaimed and reconditioned product. Persons purchasing the paint do so under the impression that they are obtaining new paint made entirely of new and unused materials.

PAR. 6. The price of \$1.55 per gallon at which respondent offers his product for sale is in no sense a special, reduced, or sacrifice price, but is the usual and customary price at which respondent sells his product in the normal and regular course of business. While the manufacturing concerns from whom respondent obtains the waste material may have paid approximately \$3.65 per gallon for the original paint, respondent has never sold his reconditioned product at that price nor at any price approaching that figure.

PAR. 7. Respondent has no warehouses other than the warehouse which he maintains in Vernon, Calif., in connection with his processing plant. It occasionally happens that persons ordering respondent's paint decline to accept it upon arrival, and in such cases it may become necessary for respondent to store the paint with some transportation company or in a public warehouse until a new purchaser for the shipment can be found. At times, also, purchasers who accept the paint later find fault with it, and in such instances respondent may arrange with such persons to hold the paint and forward it to a new purchaser as soon as a resale can be effected. The only points to which respondent ever ships his paint in advance of the sale thereof are Norfolk, Va., and New Orleans, La. Because of certain advantages in freight rates, carload shipments of the paint are sometimes made to these points and stored in public warehouses pending the sale thereof.

Respondent's letters and circulars, however, are sent to prospective purchasers indiscriminately and without regard to their location, and irrespective of whether respondent has any paint on hand in the vicin-

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ity of the prospective purchaser. In fact, it is only in exceptional cases that respondent is able to fill an order with a quantity of paint already in the vicinity of the purchaser. The customary and usual practice is to fill the order by shipment from respondent's plant in Vernon, Calif.

PAR. 8. Although respondent's letters refer to "100 gallons" or some other specific amount of paint, thus implying that the quantity available is limited, respondent is prepared to and does fill all orders received, such orders being filled at the purported sacrifice price quoted in the letters.

PAR. 9. The Commission therefore finds that the representations made by the respondent with respect to his product, as set forth in paragraphs three and four hereof, are misleading and deceptive.

PAR. 10. The Commission finds also that respondent's advertising material, including his letters and labels, is misleading and deceptive in that it fails to disclose that respondent's product is not made of new and unused materials but is a reclaimed and reconditioned product, the essential ingredient of which is waste or salvage material which has previously been used.

PAR. 11. The Commission further finds that the acts and practices of the respondent as herein described, including the failure of respondent to disclose the true nature of his product, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and value of respondent's product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken belief 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 MODIFYING ORDER TO CEASE AND DESIST

The Federal Trade Commission having on July 20, 1942, made its findings as to the facts and issued its order to cease and desist in this proceeding (copies of such findings and order being served on the respondent on July 24, 1942), and the Commission now being of the opinion that said order to cease and desist should be modified as hereinafter set forth.

Order

It is ordered, That said order to cease and desist be, and it hereby is, modified to read as follows:

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent, testimony and other evidence in support of the allegations of the complaint and in opposition thereto, taken before trial examiners of the Commission theretofore duly designated by it, 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, Jacob Swimmer, individually and trading as National Lacquer Manufacturing Co., and as National Titanium Co., or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's paint in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular price of respondent's paint any price which is in excess of the price at which such paint is regularly and customarily sold by respondent in the normal and usual course of business.

2. Representing, directly or by implication, that the price at which respondent offers his paint for sale constitutes a special, reduced, or sacrifice price; when in fact such price is the usual and customary price at which respondent sells his paint in the normal and usual course of business.

3. Representing, directly or by implication, that respondent maintains any warehouse other than that maintained at his manufacturing plant in Vernon, Calif.

4. Representing, directly or by implication, that respondent has any specified quantity of paint warehoused or on hand in the vicinity of prospective purchasers, when respondent does not in fact have such quantity warehoused or on hand in the designated locality.

5. Representing, directly or by implication, that the quantity of respondent's paint available to prospective purchasers is limited, when respondent is in fact prepared to fill all orders received.

6. Using the words "fresh stock" to designate or describe any reclaimed or reconditioned paint, or otherwise representing, directly

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or by implication, that such paint is new paint or is made from new and unused materials.

7. Representing, directly, or by implication, that respondent's paint is obtained by him direct from paint manufacturers, when such is not the fact.

8. Advertising, offering for sale, or selling reclaimed or reconditioned paint without clearly disclosing in all sales letters and other advertising media, and on labels affixed to the containers in which such paint is sold, that such paint is a reclaimed or reconditioned product made principally from salvage material.

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

UNITED DIATHERMY, INC.

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

Docket 4453. Complaint, Jan. 28, 1941—Decision, July 20, 1942

Where a corporation, engaged in interstate sale and distribution of its "United Short Wave Diathermy" device, for home use in self-administered applications of diathermy; by means of advertisements—

- (a) Represented that its said device or apparatus, when used in the treatment of self-diagnosed diseases and ailments by self-application in the home, was a safe, harmless, and effective means for treatment of rheumatism in its various forms in all parts of the body, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and colds, and for the alleviation of pain resulting from such conditions;

The facts being diathermy is not a safe therapeutic adjunct for unsupervised home use; said device was not a competent treatment for acute arthritis characterized by infection, acute bursitis, sinus trouble in which there is a retention of pus, or for any disease or condition involving an acute inflammatory process; application in excess dosage in cases where there are advanced blood vessel changes of the legs will not only cause serious burns but lead to gangrene and necessitate amputation; use of such a device for symptoms of neuralgia or neuritis without proper diagnosis may result in fatally delaying treatment of underlying disease or cause; and application in area of the body where appreciation of heat has been impaired or lost may result in serious burns; and

- (b) Failed to reveal all the facts material in the light of said representations or with respect to aforesaid consequences which might result from the use of said device under prescribed or usual conditions;

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 such belief, to purchase said device:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. R. A. McQuat, *Mr. James I. Rooney* and *Mr. William M. King*
for the Commission.

Mr. Mortimer Cohn, 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 United Diathermy, Inc., a corporation, hereinafter referred to as respondent, has violated

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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 Diathermy, Inc., is a corporation, created, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 100 West Forty Second Street, New York, N. Y.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain device or apparatus designated as United Short Wave Diathermy.

In the course and conduct of its business, the respondent causes said device or apparatus, when sold, to be transported from its place of business in the State of 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 device or apparatus, in commerce, between and among the various States of the United States and in the District of Columbia.

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

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

Arthritis alleviated by short wave diathermy. Modern science has given us a great discovery * * * short wave diathermy for the home. a FREE demonstration will convince you, as it has many others, of the pain relieving penetrating heat it produces. Prominent physicians and leading hospitals today approve of short wave diathermy for Arthritis—Bursitis—Neuralgia—Rheumatism—Lumbago—Sciatica—Neuritis—Sinus Trouble. Illustrated booklet mailed on request.

Complaint

United Diathermy, Inc.

INNER HEAT FOR INNER HEALTH

100 West 42nd St., N. Y. C.

Why Suffer? Relieve Pains of

Rheumatism	Sciatica
Bursitis	Arthritis
Lumbago	Neuralgia
Sinus Trouble	Neuritis

Now, in your own home United Diathermy offers you a new home unit just as efficient as equipment used in hospitals, yet as easy to operate as your radio. You, too, can get quick relief from rheumatic or muscular pains.

Don't keep on suffering, day after day. Science has found a way to alleviate your agonizing pains * * * a remedy so simple and effective. Short wave diathermy is being used successfully. Today YOU can alleviate quickly the agonizing pains. Why suffer any longer? The United portable model is as simple and safe to operate as your radio. It is just as efficient as the equipment used in hospitals. In order to prove to you what United Short Wave Diathermy can do for you, we invite you to try it in your own home. Just fill out the coupon and you can have a free trial right in your own home. Mail this coupon today. This offer free to anyone living within 200 miles of New York City. Short Wave Diathermy Relieved My Leg Pains (picture of woman with device applied to leg above and below knee).

To you who suffer from all forms of Rheumatic discomfort such as arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, colds, and rheumatism in all parts of the body, we dedicate this booklet. Short Wave Diathermy—science's latest most amazing achievement—here is a method that accomplishes what it sets out to do—alleviates the pain from all forms of rheumatic and muscular discomfort. United Short Wave Diathermy for Home Use. A new era in self-treatment—a method that is simplicity itself—a method that you can use for alleviation of your pains in the privacy and comfort of your own home. (Short Wave Diathermy) electro magnetic waves (radio waves) are converted into heat that is able to penetrate deeply into the body.

Simple—Efficient—Safe.

A safe, simple and effective means to alleviate your pain. No longer do you have to take your clothes off—penetrates even through your shoes. One of the best times to take a United Short Wave treatment is at night before you go to sleep * * * Your body is more receptive to beneficial treatment and retains the heat longer. As you can see in the pictures throughout this booklet, the method of applying the new United Short Wave Diathermy is so simple that anyone can use it safely and effectively.

People everywhere are finding out for themselves * * * that short wave diathermy can alleviate pains due to arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and all forms of rheumatism. Short wave diathermy has the approval of medical men * * * it is used in hospitals and other medical institutions. Short wave diathermy is so simple and so safe, that even a child can use it. * * * Thousands of people have found relief from pain in short wave diathermy. It's safe * * * sure. It's approved by medical authorities. There's no reason why anyone should continue to suffer pain and discomfort. Short wave diathermy is the scientific answer to pain.

A good many of us suffer from painful conditions of the shoulders, back, chest, feet, head, arms, knees, and other parts of the body. United Short Wave Diathermy can alleviate these conditions. The modern way of alleviating your pains is with United Short Wave Diathermy.

With United, you can take these Short Wave treatments easily and effectively yourself, in your own home and without the assistance of anyone.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that its device or apparatus, advertised as United Short Wave Diathermy, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a scientific, safe, harmless, and effective means and method for the treatment of rheumatism in its various forms in all parts of the body, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and colds, and for the alleviation of pain resulting therefrom, and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondent's device or apparatus, designated as United Short Wave Diathermy, is composed principally of a transformer, a short wave generator, two radio tubes and two coils housed in a portable cabinet. The device operates upon approximately a 13 meter wave length with a power output of approximately 160 watts. The power is obtained from house current by the necessary connection and transmitted through said device to the patient by means of two electric cords, each of which terminates in an insulated electrode. The application to the patient is made usually by placing the electrodes in such position that the power may pass between said electrodes through the affected area, at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, will not accomplish the results claimed by the respondent and is not a scientific, safe, harmless, and effective means and method to be used in the treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom, and may cause severe electric burns or other serious and irreparable injury to health.

The said device does not constitute a competent treatment for conditions of acute inflammation of the nerves, such as neuritis, neuralgia, sciatica, and lumbago, and acute inflammation of the joints, such as bursitis, arthritis, and lumbago, or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, and

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its use in such conditions may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and spreading the inflammation to adjacent tissue and allowing the absorption of toxins, if present.

Furthermore, the use of said device for the relief of pain due to neuralgia or neuritis, which may be symptoms of some deeper underlying disease or cause such as tumor, tuberculosis, syphilis, cancer, or diabetes, may fatally delay proper diagnosis and treatment.

The application of diathermy in conditions of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose, and throat, causing increased absorption of bacterial toxins, if present, perpetuating the congestion of the mucous membrane.

The application of said device by the unskilled layman in the treatment of pains in the knees may fatally delay proper diagnosis and treatment, in that cancer of the spine may; and often does, evidence itself by severe pain in said areas.

Diathermy, when applied in excess dosage in the treatment of severe pains in the extremities in the presence of advanced blood vessel changes of the legs, may cause serious burns and may directly lead to gangrene and necessitate amputation of the legs.

When diathermy is applied to areas which may be affected by malignant tumors, such use may result in stimulating the growth of cancerous cells or in spreading the trouble to other tissues.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in tissue destruction and severe burns.

There are many diseases and conditions in the treatment of which diathermy would be contra-indicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of the above classes of cases the use or improper use of diathermy might aggravate rather than relieve such conditions. Furthermore, many conditions, including some of those for which respondent recommends its device, are sometimes symptomatic or indicative of underlying systemic disorders for which treatment by diathermy would have no therapeutic value and might even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical

authority in order to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health.

The said advertisements are further false, as aforesaid, in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

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

PAR. 8. The foregoing acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 28, 1941, issued and subsequently served its complaint in this proceeding upon respondent, United Diathermy, Inc., a corporation, charging it with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of 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 therefore duly desig-

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nated by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of 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 Diathermy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at 100 West Forty-second Street, New York, N. Y. It is now, and for several years last past has been, engaged in the sale and distribution of a certain electrical device or apparatus designated as "United Short Wave Diathermy."

PAR. 2. In the course and conduct of its aforesaid business, respondent causes said device or apparatus, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in States of the United States other than New York, and respondent maintains, and has maintained, a course of trade in said device or apparatus in commerce between and among the various States of the United States.

PAR. 3. Respondent's device or apparatus is essentially a portable cabinet containing means for the generation of electrical short waves and the application thereof to parts of the human body by means of insulated electrodes. The electrical energy necessary for the operation of this device is secured by attaching it to the domestic electrical circuits in the user's home, and it has a power output of approximately 160 watts. The device has a means of modulating the power output and a time switch which will automatically limit its period of operation to a predetermined time, such time being subject to the control of the operator. When the two electrodes are applied to the user's body and the device or apparatus put in operation, the passage of the electrical short waves between the electrodes creates heat within the body tissues of the user because of their resistance to the passage of such electrical currents. This device or apparatus is offered for sale and sold to members of the public for use in giving self-administered applications of diathermy in their homes.

PAR. 4. In the course and conduct of its business as aforesaid, 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 "United Short Wave Diathermy" device or apparatus; 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 device or apparatus in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements, and representations contained in said false advertisements disseminated and caused to be disseminated as aforesaid, are the following:

Arthritis alleviated by short wave diathermy. Modern science has given us a great discovery * * * short wave diathermy for the home. A FREE demonstration will convince you, as it has many others, of the pain relieving penetrating heat it produces. Prominent physicians and leading hospitals today approve of short wave diathermy for Arthritis—Bursitis—Neuralgia—Rheumatism—Lumbago—Sciatica—Neuritis—Sinus Trouble. Illustrated booklet mailed on request.

Why Suffer? Relieve Pains of

Rheumatism	Sciatica
Bursitis	Arthritis
Lumbago	Neuralgia
Sinus Trouble	Neuritis

Now, in your own home United Diathermy offers you a new home unit just as efficient as equipment used in hospitals, yet as easy to operate as your radio.

You, too, can get quick relief from rheumatic or muscular pains.

Don't keep on suffering, day after day. Science has found a way to alleviate your agonizing pains * * * a remedy so simple and effective.

Short wave diathermy is being used successfully. Today YOU can alleviate quickly the agonizing pains. Why suffer any longer? The United portable model is as simple and safe to operate as your radio. It is just as efficient as the equipment used in hospitals. In order to prove to you what United Short Wave Diathermy can do for you, we invite you to try it in your own home. Just fill out the coupon and you can have a free trial right in your own home. Mail this coupon today. This offer free to anyone living within 200 miles of New York City.

Short Wave Diathermy Relieved My Leg Pains.

(Picture of woman with device applied to her leg above and below knee.)

Findings

To you who suffer from all forms of Rheumatic discomfort such as arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, colds, and rheumatism in all parts of the body, we dedicate this booklet. Short Wave Diathermy—science's latest most amazing achievement—here is a method that accomplishes what it sets out to do—alleviates the pain from all forms of rheumatic and muscular discomfort. United Short Wave Diathermy For Home Use. A new era in self-treatment—a method that is simplicity itself—a method that you can use for alleviation of your pains in the privacy and comfort of your own home. (Short Wave Diathermy) electro magnetic waves (radio waves) are converted into heat that is able to penetrate deeply into the body.

* * * * *

Simple—Efficient—Safe

A safe, simple and effective means to alleviate your pain. No longer do you have to take your clothes off—penetrates even through your shoes. One of the best times to take a United Short Wave Treatment is at night before you go to sleep * * * your body is more receptive to beneficial treatment and retains the heat longer. As you can see in the pictures throughout this booklet, the method of applying the new United Short Wave Diathermy is so simple that anyone can use it safely and effectively.

* * * * *

People everywhere are finding out for themselves * * * that short wave diathermy can alleviate pains due to arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and all forms of rheumatism. Short wave diathermy has the approval of medical men * * * It is used in hospitals and other medical institutions. Short wave diathermy is so simple and so safe, that even a child can use it. * * * Thousands of people have found relief from pain in short wave diathermy. It's safe * * * sure. It's approved by medical authorities. There's no reason why anyone should continue to suffer pain and discomfort. Short wave diathermy is the scientific answer to pain. A good many of us suffer from painful conditions of the shoulders, back, chest, feet, head, arms, knees, and other parts of the body. United Short Wave Diathermy can alleviate these conditions. The modern way of alleviating your pains is with United Short Wave Diathermy.

* * * * *

With United, you can take these Short Wave treatments easily and effectively yourself, in your own home and without the assistance of anyone.

PAR. 5. By the use of statements such as those set out in the preceding paragraph, respondent represents that its device or apparatus known as "United Short Wave Diathermy," when used by members of the general public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a safe, harmless, and effective means and method for the treatment of rheumatism in its various forms in all parts of the body, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and colds, and for the alleviation of pain resulting from such conditions.

In truth and in fact respondents' device or apparatus is not safe and harmless, and when used by an untrained person may result in severe burns or other serious injury to health. It is not a competent and effective treatment for acute arthritis characterized by infection, acute bursitis, sinus trouble in which there is a retention of pus, or for any disease or condition involving an acute inflammatory process.

PAR. 6. Respondent's representations concerning its said device or apparatus also constitute false advertisements for the reason that they fail to reveal all of the facts material in the light of such representations, or material with respect to consequences which may result from the use of said device or apparatus under the conditions prescribed or under such conditions as are customary and usual.

The use of respondent's device or apparatus in applying high-frequency electric currents to produce heat in body tissues for therapeutic purposes is a form of treatment powerful enough to do serious injury to the user if improperly applied. Such a machine or device, when used unskillfully, will burn or otherwise seriously damage the person to whom it is applied. The application of such diathermy by an unskilled person, in cases where there are advanced blood vessel changes of the legs (usually characterized by severe pains in the extremities), will, in excess dosage, not only cause serious burns but will lead directly to gangrene and necessitate amputation of the leg. Neuralgia and neuritis are symptoms of some underlying disease or cause, and the attempt to relieve the pains resulting from such conditions by the use of a diathermy device or apparatus such as respondent's without seeking to secure proper diagnosis as to the cause of such pains, may result in fatally delaying the commencement of diagnosis and treatment of the underlying disease or cause. The application of diathermy in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue, and diathermy is definitely contraindicated in any acute inflammatory process, acute arthritis characterized by infection, acute bursitis, and sinus trouble in which there is a retention of pus.

The safe and intelligent use of a diathermy device or apparatus such as respondent's requires that there first be a complete diagnosis by a competent physician, a determination of whether or not diathermy is indicated, and, if so, the amount of heat to be applied and the placement of the electrodes, control and regulation of the dosage, and preventive measures against burns and tissue destruction. Diathermy is not a safe therapeutic adjunct in the hands of an untrained person for unsupervised home use.

PAR. 7. The use by the respondent of the false, deceptive, and misleading statements and representations set out herein with respect to

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its device or apparatus, 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 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 respondent's said device or apparatus.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence in support of and in opposition to the allegations of said 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, United Diathermy, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of an electrical device or apparatus designated as "United Short Wave Diathermy," or any other device or apparatus of substantially similar character, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly disseminating or causing to be disseminated, 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 concerning the electrical device or apparatus designated "United Short Wave Diathermy;" or disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the electrical device or apparatus designated "United Short Wave Diathermy," which advertisement:

1. Represents, directly or through inference, that said device or apparatus is safe or harmless;

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2. Represents, directly or through inference, that said device or apparatus has any therapeutic value in the treatment of arthritis characterized by infection, bursitis where the condition is acute, sinus trouble in which there is a retention of pus, or any disease or condition involving an acute inflammatory process;

3. Represents, directly or through inference, that said device or apparatus constitutes a competent or effective treatment for rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, or colds, or for the alleviation of pain resulting from any of said disorders or ailments, unless such advertisement is specifically limited to those cases of such disorders or ailment which do not involve acute inflammatory processes;

4. Fails to reveal clearly, conspicuously, and unequivocally that said device or apparatus is not safe to use unless and until a competent medical authority has determined as a result of diagnosis that the use of diathermy is indicated and has prescribed the frequency and rate of application of such diathermy treatments and the user has been thoroughly and adequately instructed by a trained technician in the use of such diathermy device or apparatus.

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

AGRICULTURAL INSECTICIDE & FUNGICIDE ASSOCIATION, ITS OFFICERS, DIRECTORS, AND MEMBERS, ET AL.

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

Docket 4145. Complaint, May 29, 1940—Decision, July 24, 1942

Where numerous concerns, engaged in the manufacture and competitive interstate sale and distribution of various types of insecticides, fungicides, and related items, including such bulk or staple items as arsenate of lead, calcium arsenate, lime sulphate, nicotine, etc., as well as patented items; and the Association, of which all but two of said concerns were members; and its various officers and directors; entering into an understanding, agreement, combination, or conspiracy to restrict, restrain, and suppress competition in the sale and distribution of various types of insecticides, fungicides, and related items to customers—

(a) Agreed to fix and maintain uniform prices, terms, and discounts at which said items were to be sold to various classes of customers, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said Association as to prices, etc., at which said members and certain nonmembers were selling and offering their said products; and

Where said members—

(b) Concertedly fixed many of the said agreed prices on a delivered basis to certain consumers and to various classes of dealers, including therein actual rail freight to purchasers at respective destinations but no allowance on shipments by truck; with intent and effect of preventing differences in the delivered cost to many buyers by reason of differences in the cost of delivery from the members' respective shipping points;

(c) Entered into agreements to fix and maintain uniform price differentials between carload and less than carload lots, and uniform discounts for payment of invoices within certain fixed periods; and

(d) Entered into agreements to fix the prices to be quoted on all government, state, and municipal bids, and to require dealers to maintain certain uniform retail prices; and

Where said members, various individuals, officers, and directors of aforesaid Association, and others, as aforesaid, or certain of them, as the case might be, pursuant to and in furtherance of aforesaid general understandings, etc.—

(e) Organized said Association to act as a clearing house for the exchange of statistical, price, and trade information submitted by the members, including reports as to the prices, terms, and discounts at which various products were sold or offered, and advance notice of future prices; and

(f) Attended regular meetings of the Association at convenient locations, at which were discussed trade and competitive conditions and matters such as use of all legal efforts to police filed price schedules, continuance of the price

basis, protection of prices in certain territories, withholding of freight allowances on shipments from jobbers' stocks, etc., the naming of the minimum price for quotation on all government, state, and municipal bids, and the fixing of various prices and action in the interest of maintaining various price levels, and trade policies, and prices to be charged were agreed on; and

Where aforesaid Association, pursuant to said agreements, etc.—

- (g) Acted as a clearing house for the exchange of aforesaid information and policed reported failures to adhere, as agreed and understood among the members, to the prices respectively filed with it;
- (h) Held meetings from time to time to vote on dealers to be recognized as distributors of products in question, and compiled and distributed to the members and cooperating nonmembers lists of dealers to be recognized as retailers and sold as such to the exclusion of others, and also lists of dealers to be similarly sold by them on a wholesale basis, and assisted in policing the enforcement of the use of such "distributor guides" or "white lists";
- (i) Mailed out a special bulletin dealing with the merchandising policy for the industry, which advised that "B" and "C" buyers must be registered with the Association, and their names added or rejected by "mutual agreements" and reviewed by the Board of Directors at their next meeting;
- (j) Maintained an open price filing system whereby it relayed to the members and to cooperating nonmember concerns advance notice of immediate and future price rises and declines; and

Where two member corporations, engaged in the manufacture and competitive interstate sale and distribution of monohydrated copper sulphate and certain other copper sulphate byproducts and specialties—

- (k) Agreed with other members of aforesaid Association that copper producers would sell only to a selected list of agents, and that sales were to be made in car lots to legitimate dealers and jobbers at the established price schedule only; and named a committee to submit a list of agents and proposed price schedules, and agreed thereon and established the same;

With tendency and effect of unduly restraining and suppressing competition in the sale and distribution of insecticides, fungicides, and related items; of enhancing the prices of said products and maintaining them at artificial levels above those which would prevail under open competition; and of tending to create a monopoly in said concerns in the manufacture, sale and distribution of said products:

Held, That such acts and practices, under the circumstances set forth, hindered and prevented price competition between said concerns in the sale of the products in question; placed in said concerns the power to control and enhance prices; unreasonably restrained commerce in said products; and constituted unfair methods of competition in commerce.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Scandrett, Tuttle & Chalaire, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for Agricultural Insecticide & Fungicide Assn., *L. S. Hitchner* and *June C. Heitzman*; the latter also appearing, along with—

Mr. Thomas J. McDowell, of Cleveland, Ohio, for *H. D. Whittlesey*, *Acme White Lead & Color Works*, *Lucas Kil-Tone Co.*, and *Sherwin-Williams Co., Inc.*;

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Franchot, Runals, Cohen, Taylor & Rickert, of Niagara Falls, N. Y., for J. B. Cary and Niagara Sprayer and Chemical Co., Inc.;

White & Case, of New York City, for J. H. Boyd and Commercial Chemical Co.;

Mr. Arthur W. Rinke, of New York City, for R. E. Demmon, John Powell & Co., Inc., and Stauffer Chemical Co., Inc.;

Mr. Robert F. Vaughan, of Louisville, Ky., for G. F. Leonard and Tobacco By-Products & Chemical Corporation;

Mr. Henry C. Little, of New York City, for American Cyanamid & Chemical Corporation;

Wood, Molloy & France, of New York City, for Chipman Chemical Co., Inc.; and

Mr. John W. Eckelberry, of Wilmington, Del., for E. I. duPont de Nemours & Co., Inc.

Mr. Felix T. Smith, of San Francisco, Calif., for A. J. Flebut and California Spray-Chemical Corporation.

Sullivan & Cromwell, of New York City, for G. E. Riches and American Agricultural Chemical Co.

Mr. Calvin A. Campbell, of Midland, Mich., for Dow Chemical Co.

Mr. Leland Hazard and *Mr. Joseph T. Owens*, of Pittsburgh, Pa., for Pittsburgh Plate Glass Co., Corona Chemical Division.

Mr. Julien D. Goell and *Levin, Rosmarin & Schwartz*, of New York City, for Ansbacher-Siegle Corporation.

Willkie, Owen, Otis, Farr & Gallagher, of New York City, for General Chemical Co.

Reeves, Todd, Ely & Beaty, of New York City, for Phelps Dodge Refining Corporation.

Guggenheimer, Untermeyer & Goodrich, of Washington, D. C., and *Guggenheimer & Untermeyer*, of New York City, for Tennessee 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 corporations, associations, firms, and individuals named in the caption hereof, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce, as commerce is defined in said act, and it appearing to the said Commission that a proceeding by 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, Agricultural Insecticide & Fungicide Association is a corporation organized and existing under the

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laws of the State of New Jersey with its principal office and place of business located at 285 Madison Avenue in the city of New York, N. Y. The membership of said respondent, Agricultural Insecticide & Fungicide Association is composed of individuals, partnerships, and corporations who are engaged in the manufacture and sale of chemicals, paints, fertilizers, various types of insecticides and fungicides, and related items. Said respondent is hereinafter referred to for convenience as "respondent association."

PAR. 2. The following named individuals are or have been officers of said respondent Agricultural Insecticide & Fungicide Association and are named as respondents herein both in their individual capacities and as officers of said Agricultural Insecticide & Fungicide Association: R. N. Chipman, % Chipman Chemical Co., Inc., Bound Brook, N. J., chairman of the board of directors; L. S. Hitchner, 285 Madison Avenue, New York, N. Y., president and treasurer; June C. Heitzman, 285 Madison Avenue, New York, N. Y., secretary.

The following named individuals are or have been members of the board of directors of said respondent Agricultural Insecticide & Fungicide Association and are named as respondents herein both in their individual capacities and as members of the board of directors of said respondent association; R. N. Chipman, % Chipman Chemical Co., Inc., Bound Brook, N. J.; H. D. Whittlesey, % Sherwin-Williams Co., Inc., Cleveland, Ohio; H. P. Mansfield, % E. I. duPont de Nemours & Co., Inc., Wilmington, Del.; J. B. Cary, % Niagara Sprayer and Chemical Co., Inc., Middleport, N. Y.; J. H. Boyd % Commercial Chemical Co., Memphis, Tenn.; A. J. Flebut, % California Spray-Chemical Corporation, Lucas & Ortho Way, Richmond, Calif.; R. E. Demmon, % Stauffer Chemical Co., Inc., 420 Lexington Avenue, New York, N. Y.; G. F. Leonard, % Tobacco By-Products and Chemical Corporation, Columbia Building, Louisville, Ky.; G. E. Riches, % American Agricultural Chemical Co., 50 Church Street, New York, N. Y.; and L. S. Hitchner, 285 Madison Avenue, New York, N. Y. Said respondents are hereinafter referred to for convenience as "officer and director respondents."

PAR. 3. The membership of said respondent Agricultural Insecticide & Fungicide Association varies from time to time and it is therefore impractical to specifically name all of said members as respondents herein. The following named corporations and partnerships are representative of the whole membership of said respondent association and are named as respondents herein individually and severally and as members of said respondent association, and as representatives of all members of said respondent association as a class, including those not herein specifically named who are also made respondents

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herein; Acme White Lead and Color Works, a corporation, 8250 St. Aubin, Detroit, Mich.; American Agricultural Chemical Co., a corporation, 50 Church Street, New York, N. Y.; American Cyanamid and Chemical Corporation, a corporation, 30 Rockefeller Plaza, New York, N. Y.; American Nicotine Co., Inc., Henderson, Ky.; The Antiseptic Products Co., a corporation, 3101-3119 Walnut Street, Denver, Colo.; California Spray-Chemical Corporation, Lucas & Ortho Way, Richmond, Calif.; Chipman Chemical Co., Inc., Bound Brook, N. J.; George W. Cole & Co., Inc., New York, N. Y.; Hercules Glue Co., Ltd., a corporation trading as Colloidal Products Corporation, 2598 Taylor Street, San Francisco, Calif.; Commercial Chemical Co., a corporation, Memphis, Tenn.; Derris, Inc., 79 Wall Street, New York, N. Y.; Dow Chemical Co., a corporation, Midland, Mich.; E. I. duPont de Nemours & Co., Inc., Wilmington, Del.; The Latimer-Goodwin Chemical Co., a corporation, Grand Junction, Colo.; Fred L. Lavanburg Co., a corporation, 105 Bedford Avenue, Brooklyn, N. Y.; Lucas Kil-Tone Co., a corporation, 322 Race Street, Philadelphia, Pa.; Niagara Sprayer and Chemical Co., Inc., Middleport, N. Y.; Nicotine Production Corporation, Inc., Clarksville, Tenn.; John Powell & Co., Inc., 114 E. Thirty-second Street, New York, N. Y.; Sherwin-Williams Co., Inc., Cleveland, Ohio; Southern Acid & Sulphur Co., Inc., Rialto Building, St. Louis, Mo.; Stauffer Chemical Co., Inc., 420 Lexington Avenue, New York, N. Y.; J. M. Taylor, E. P. Brown and E. W. Parker, partners, trading as Taylor Chemical Works, Ltd., Aberdeen, N. C.; Tobacco By-Products and Chemical Corporation, Columbia Building, Louisville, Ky.; The J. W. Woolfolk Co., a corporation, Fort Valley, Ga.; and Pittsburg Plate Glass Co., Corona Chemical Division a corporation, 235 E. Pittsburg Ave., Milwaukee, Wis. Said respondents are hereinafter referred to for convenience as "respondent members."

PAR. 4. Respondent, Allegheny Chemical Corporation, is a corporation organized and existing under the laws of the State of Delaware and maintains its principal office and place of business at 35 North Sixth Street in the city of Reading, within the State of Pennsylvania.

Respondent, Ansbacher-Siegle Corporation, is a corporation organized and existing under the laws of the State of New York and maintains its principal office and place of business at 310 North Seventh Street, in the city of Brooklyn, within the State of New York.

Respondent, General Chemical Co., is a corporation organized and existing under the laws of the State of New York and maintains its principal office and place of business at 40 Rector Street in the city of New York within the State of New York.

Phelps Dodge Refining Corporation, is a corporation organized and existing under the laws of the State of New York and maintains its principal office and place of business at 40 Wall Street, in the city of New York, within the State of New York.

Respondent, Tennessee Corporation, is a corporation organized and existing under the laws of the State of New York and maintains its principal office and place of business at 61 Broadway, in the city of New York, within the State of New York.

All of said respondents mentioned in this paragraph have cooperated with the other respondents in the acts and things hereinafter more particularly described and set forth, and are hereinafter referred to for convenience as "cooperating respondents."

PAR. 5. All of said respondent members hereinbefore set out in paragraph 3 and said cooperating respondents hereinbefore set out in paragraph 4, save and except respondents Phelps Dodge Refining Corporation and Tennessee Corporation have been for more than 2 years last past and are now engaged in the manufacture and distribution of chemicals, fertilizers, various types of insecticides and fungicides, and related items which the said respective respondent members and said cooperating respondents sell to their respective customers located in the various States of the United States and in the District of Columbia, causing said products, when sold, to be transported from the State of location of the respective respondent members and cooperating respondents to the purchasers thereof located at various points in the several States of the United States other than the State of the origin of such shipments and in the District of Columbia. Except for the acts and practices engaged in by said respondent members and said cooperating respondents as hereinafter set forth, said respondent members and said cooperating respondents would be in free, open, and active competition with each other in the sale and distribution of their respective products in commerce between and among the several States of the United States. There has been and now is a course of interstate trade and commerce in said products between said respondent members and said cooperating respondents and dealers in said products located throughout the several States of the United States and in the District of Columbia. At all times mentioned herein said respondent members and said cooperating respondents have been in competition with other corporations, partnerships and individuals likewise engaged in the manufacture and sale in interstate commerce of chemicals, fertilizers, various types of insecticides and fungicides, and related items.

PAR. 6. Said respondents, Phelps Dodge Refining Corporation and Tennessee Corporation, have been for more than two years last past and are now engaged in the manufacture and distribution of monohydrated copper sulphate and certain other copper byproducts and specialties which the said respondents sell to their respective customers located in the various States of the United States and in the District of Columbia, causing said products, when sold, to be transported from the State of the location of the respective respondents to the purchasers thereof located at various points in the several States of the United States other than the State of origin of such shipments and in the District of Columbia. Except for the acts and practices engaged in by said respondents hereinafter set forth, said respondents would be in free, active and open competition with each other in the sale and distribution of their respective products in commerce between and among the several States of the United States. There has been and now is a course of interstate trade and commerce in said products between said respondents and dealers in said products located throughout the several States of the United States and in the District of Columbia. At all times mentioned herein said respondents have been in competition with other corporations, partnerships, and individuals likewise engaged in the manufacture and distribution in interstate commerce of monohydrated copper sulphate and certain other copper byproducts and specialties.

PAR. 7. Said respondent members acting in cooperation with each other and with the said cooperating respondents and through and in cooperation with said respondent association for more than 2 years last past and particularly since on or about October 1, 1936, have entered into an understanding, agreement, combination or conspiracy among themselves and with and through said respondent association and with said cooperating respondents to restrict, restrain, and suppress competition in the sale and distribution of chemicals, various types of insecticides and fungicides, and related items to customers located throughout the several States of the United States and in the District of Columbia as aforesaid by agreeing to fix and maintain uniform prices, terms, and discounts at which said items are to be sold and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent association as to the prices, terms, and discounts at which said respondent members and said cooperating respondents have sold and are offering to sell their said products to customers and prospective customers.

PAR. 8. Pursuant to said understanding agreement, combination or conspiracy, and in furtherance thereof, the said respondents have

done and performed, and still do and perform, the following acts and things:

1. Certain of said respondent members organized in February of 1934 said respondent Association, Agricultural Insecticide and Fungicide Association, which said Association since its organization has acted as a clearing house for the exchange of information submitted to it by said respondent members including reports as to the sales of the chemicals, various types of insecticides and fungicides, and related items together with the prices, terms, and discounts at which said items are sold or will be sold or offered to be sold.

2. Regular meetings of the members of said respondent Association have been and are held from time to time at convenient locations within the United States and at said meetings said respondent members have discussed and do discuss trade and competitive conditions in said industry and have agreed upon and established and do agree upon and establish trade policies to be followed and prices to be charged by said respondent members in the interstate sale and distribution of their said products.

3. Said respondent Association has compiled and distributed to respondent members and to the cooperating respondents white lists containing the names of those dealers in chemicals, various types of insecticides and fungicides, and related items, who are to be sold by the respondent members and the said cooperating respondents on a wholesale basis to the exclusion of other dealers which said lists are known as Distributor Guides, and have assisted in policing the respondent members and the said cooperating respondents in the enforcement of the use of such white lists or Distributor Guides.

4. Said respondent Association has compiled and distributed to respondent members and to the said cooperating respondents lists of dealers in chemicals, various types of insecticides and fungicides, and related items, who are to be recognized by the said respondent members and said cooperating respondents as retail dealers in said products and are to be sold as such retail dealers in said products to the exclusion of other dealers therein.

5. Said respondent Association has maintained and now maintains an open price filing system whereby it has and does relay to respondent members and said cooperating respondents, advance notice of immediate and future price rises and declines.

PAR. 9. Respondents, Phelps Dodge Refining Corporation and Tennessee Corporation, have entered into an agreement, combination, or conspiracy with certain members of respondent Association to establish uniform terms and conditions of sale and to fix and maintain the prices and to designate certain respondent members and their respec-

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tive customers who are to purchase and resell monohydrated copper sulphate and certain other copper byproducts and specialties.

PAR. 10. Said cooperating respondents hereinbefore named in paragraph 4, while not members of respondent Association, Agricultural Insecticide and Fungicide Association, have joined with the said respondent Association and said respondent members in said conspiracy hereinbefore set out in paragraphs 7 and 8 and have assisted in and cooperated in carrying out the objects and aims of said combination, agreement or conspiracy.

PAR. 11. The officer and director respondents hereinbefore named in paragraph 2 hereof are now and have been officers and directors of said respondent Association and as such officers and directors of said respondent Association have had and now have full and complete charge of the activities of said respondent Association, conducting the meetings of said members of said respondent Association, collecting statistical information from the members of said respondent Association, and compiling and disseminating the same to the members of said respondent Association and formulating the trade policies of said respondent members, all in pursuance and furtherance of the objects and aims of said respondent Association, as hereinbefore set out in paragraphs 7 and 8.

PAR. 12. The results of the acts and practices of the said respondent members and of said respondent Association and said cooperating respondents as hereinbefore set out in paragraphs 7 and 8, have been and now are to substantially lessen, restrict, restrain, and suppress competition in the interstate sale of chemicals, various types of insecticides and fungicides, and related items, throughout the several States of the United States and in the District of Columbia and empower the said respondents to control the market and enhance the prices of said products above the price which would prevail under normal, natural and open competition between said respondents; and also tend to create a monopoly in said respondents in the manufacture and sale of said products in interstate commerce.

PAR. 13. 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 said respondents in the sale of said products in commerce within the intent and meaning of the Federal Trade Commission Act, and have placed in said respondents the power to control prices; and have increased the prices of said products paid by the purchasers thereof and consequently the prices paid by the public; have created in the said respondents a monopoly in the sale of said products in such

commerce and unreasonably restrained such commerce in said 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 May 29, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Agricultural Insecticide & Fungicide Association, a corporation; R. N. Chipman, L. S. Hitchner, June C. Heitzman, H. D. Whittlesey, H. P. Mansfield, J. B. Cary, J. H. Boyd, A. J. Flebut, R. E. Demmon, G. F. Leonard, and G. E. Riches, individually and as officers and directors of respondent Agricultural Insecticide & Fungicide Association; Allegheny Chemical Corporation, a corporation; Ansbacher-Siegle Corporation, a corporation; General Chemical Co., a corporation; Phelps Dodge Refining Corporation, a corporation; Tennessee Corporation, a corporation; The Acme White Lead and Color Works, a corporation; The American Agricultural Chemical Co., a corporation; The American Cyanamid and Chemical Corporation, a corporation; The American Nicotine Co., Inc., a corporation; The California Spray-Chemical Corporation, a corporation; The Chipman Chemical Co., Inc., a corporation; The Hercules Glue Co., Ltd., a corporation trading under the name of Colloidal Products Corporation; The Commercial Chemical Co., a corporation; Derris, Inc., a corporation; Dow Chemical Co., a corporation; E. I. duPont de Nemours & Co., Inc., a corporation; The Latimer-Goodwin Chemical Co., a corporation; The Niagara Sprayer and Chemical Co., Inc., a corporation; The Nicotine Production Corporation, a corporation; John Powell & Co., Inc., a corporation; The Sherwin-Williams Co., Inc., a corporation; The Southern Acid & Sulphur Co., Inc., a corporation; The Stauffer Chemical Co., Inc., a corporation; J. M. Taylor, general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd.; The Tobacco By-Products and Chemical Corporation, a corporation; The J. W. Woolfolk Co., a corporation; George W. Cole & Co., Inc., a corporation; Antiseptic Products Co., a corporation; Fred L. Lavanburg Co., a corporation; Lucas Kil-Tone Co., a corporation; and Pittsburgh Plate Glass Co., Corona Chemical Division, a corporation; charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answers thereto, a stipulation was entered into whereby it was stip-

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ulated and agreed that a statement of facts signed and executed by the respondents or by their counsel on their behalf (except the respondents Allegheny Chemical Corporation, Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., and Pittsburgh Plate Glass Co., Corona Chemical Division), and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that said Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of a trial examiner's report upon the evidence.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Agricultural Insecticide & Fungicide Association, hereinafter referred to as "respondent Association," is a corporation organized on February 27, 1934, under the laws of the State of Delaware, having its principal office at 285 Madison Avenue, in the city of New York, N. Y. Said respondent Association has as its members, manufacturers, and processors of insecticides and fungicides and related items. These products fall into two general classes, namely: (1) bulk or staple items, such as arsenate of lead, calcium arsenate, lime sulphate, nicotine, etc., and (2) patented items which are made and sold by the several members of the industry as their own products and not in competition in the sense that more than one company manufactures the product in accordance with the same formula. These patented insecticides and fungicides, however, do compete as to purpose and more than one member makes a product which it sells for the extinction of a particular insect, fungus growth, or other enemy of plant life. Some of the members of the respondent association are not engaged in the manufacture of these products but serve only in the capacity of a reseller in said products.

Respondent, R. N. Chipman, is an individual and a representative of The Chipman Chemical Co., Inc., Bound Brook, N. J., and acted as chairman of the board of directors of respondent Association until January 10, 1940.

Respondent, L. S. Hitchner, 285 Madison Avenue, New York, N. Y., is an individual and is a director and officer of said respondent Association, having held the office of president and treasurer from June 5, 1935, to August 31, 1940, and the position of executive secretary and treasurer from September 1, 1940, to date.

Respondent, June C. Heitzman, 285 Madison Avenue, New York, N. Y., is an individual and an officer of respondent Association, having held the office of secretary from June 5, 1935 to August 31, 1940.

Respondent H. D. Whittlesey, is an individual and a representative of The Sherwin-Williams Co., Inc., Cleveland, Ohio, and has been a director of respondent Association from September 1, 1937, to date.

Respondent, H. P. Mansfield, is an individual and a representative of E. I. duPont de Nemours & Co., Inc., Wilmington, Del., and has been a director of respondent Association from its organization to date.

Respondent, J. B. Cary, is an individual and a representative of The Niagara Sprayer and Chemical Co., Inc., Middleport, N. Y., and has been a director of respondent Association from its organization to date.

Respondent, J. H. Boyd, is an individual and a representative of The Commercial Chemical Co., Memphis, Tenn., and has been a director of respondent Association from its organization to date.

Respondent, A. J. Flebut, is an individual and a representative of The California Spray-Chemical Corporation, Lucas & Ortho Way, Richmond, Calif., and was a director of respondent Association from September 1, 1938, to August 31, 1941.

Respondent, R. E. Demmon, is an individual and a representative of The Stauffer Chemical Co., Inc., 420 Lexington Avenue, New York, N. Y., and has been a director of respondent Association from its organization to date.

Respondent, G. F. Leonard, is an individual and a representative of The Tobacco By-Products and Chemical Corporation, Columbia Building, Louisville, Ky., and has been a director of respondent Association from its organization to date.

Respondent, G. E. Riches, is an individual and a representative of The American Agricultural Chemical Co., 50 Church Street, New York, N. Y., and was a director of respondent Association from June 5, 1935, to May 15, 1940.

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Respondent, The Acme White Lead and Color Works, is a corporation organized and existing under the laws of the State of Michigan, with its principal office at 8250 St. Aubin Street, Detroit, Mich.

Respondent, The American Agricultural Chemical Co., is a corporation organized and existing under the laws of the State of Delaware, having its principal office at 50 Church Street, New York, N. Y.

Respondent, The American Cyanamid and Chemical Corporation, is a corporation organized, and existing under the laws of the State of Delaware, with its principal office located at 30 Rockefeller Plaza, New York, N. Y.

Respondent, The American Nicotine Co., Inc., is a corporation organized and existing under the laws of the Commonwealth of Kentucky, with its principal office in Henderson, Ky.

Respondent, The California Spray-Chemical Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at Lucas and Ortho Way, Richmond, Calif.

Respondent, The Chipman Chemical Co., Inc., is a corporation organized and existing under the laws of the State of New York with its principal office at Bound Brook, N. J.

Respondent, The Hercules Glue Co., Ltd., is a corporation trading under the name of Colloidal Products Corporation, organized and existing under the laws of the State of California, with its principal office located at 2598 Taylor Street, San Francisco, Calif.

Respondent, The Commercial Chemical Co., is a corporation having its principal office at Memphis, Tenn.

Respondent, Derris, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office at 79 Wall Street, New York, N. Y.

Respondent, Dow Chemical Co., is a corporation organized and existing under the laws of the State of Michigan, with its principal office at Midland, Mich.

Respondent, E. I. duPont de Nemours & Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office at Wilmington, Del.

Respondent, The Latimer-Goodwin Chemical Co., is a corporation organized and existing under the laws of the State of Colorado, with its principal office at Grand Junction, Colo.

Respondent, The Niagara Sprayer and Chemical Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office at Middleport, N. Y.

Respondent, The Nicotine Production Corporation, is a corporation organized and existing under the laws of the State of Virginia, with its principal office at Clarksville, Tenn.

Respondent, John Powell & Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office at 114 East 32nd Street, New York, N. Y.

Respondent, The Sherwin-Williams Co., Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal office at Cleveland, Ohio.

Respondent, The Southern Acid & Sulphur Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office in the Rialto Building, St. Louis, Mo.

Respondent, The Stauffer Chemical Co., Inc., is a corporation organized and existing under the laws of the State of California, with its principal office at 420 Lexington Avenue, New York, N. Y.

Respondent, J. M. Taylor is general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., a limited partnership organized under and by virtue of the laws of the State of North Carolina, with their principal office at Aberdeen, N. C.

Respondent, The Tobacco By-Products and Chemical Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office in the Columbia Building, Louisville, Ky.

Respondent, The J. W. Woolfolk Co., is a corporation organized and existing under the laws of the State of Georgia, with its principal office at Fort Valley, Ga.

Respondents, The Acme White Lead and Color Works, The American Agricultural Chemical Co., The American Cyanamid and Chemical Corporation, The American Nicotine Co., Inc., The California Spray-Chemical Corporation, The Chipman Chemical Co., Inc., The Hercules Glue Co., Ltd., The Commercial Chemical Co., Derris, Inc., Dow Chemical Co., E. I. duPont de Nemours & Co., Inc., The Latimer-Goodwin Chemical Co., The Niagara Sprayer and Chemical Co., Inc., The Nicotine Production Corporation, John Powell & Co., Inc., The Sherwin-Williams Co., Inc., The Southern Acid & Sulphur Co., Inc., The Stauffer Chemical Co., Inc., J. M. Taylor, general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., The Tobacco By-Products and Chemical Corporation, and J. W. Woolfolk Co., are all, respectively, respondent members of the respondent Association and are hereinafter referred to as "respondent members."

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Respondent, George W. Cole and Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office in the city of New York, N. Y. Said respondent has not been a member of respondent Association since August 31, 1938, but has cooperated with respondent Association and its members in some of its and their activities hereinafter described.

Respondent, Ansbacher-Siegle Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office at 310 North Seventh Street, Brooklyn, N. Y. Said respondent was formerly a member of respondent Association, having resigned its membership on July 6, 1938, but has cooperated with the respondent Association and with its members in some of its and their activities hereinafter set forth.

Respondent, General Chemical Co., is a corporation organized and existing under the laws of the State of New York, with its principal office at 40 Rector Street, New York, N. Y. Said respondent is not a member of respondent Association but has cooperated with the respondent Association and its members in some of its and their activities as hereinafter set forth.

Respondent, Phelps Dodge Refining Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office at 40 Wall Street, New York, N. Y. Said respondent is not a member of respondent Association but has cooperated with the respondent Association and its members in some of its and their activities as hereinafter set forth.

Respondent, Tennessee Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office at 61 Broadway in the city of New York, N. Y. Said respondent is not a member of respondent Association but has cooperated with respondent Association and its members in some of its and their activities as hereinafter set forth.

Respondent, Allegheny Chemical Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 35 North Sixth Street, Reading, Pa. The plant of said respondent burned on September 6, 1940, since which date respondent has been in liquidation and has discontinued all other business activities.

Respondent, Antiseptic Products Co., was formerly a corporation with its principal office at 3101 Walnut Street, Denver, Colo., but sold its assets and was dissolved in 1939.

Respondent, Fred L. Lavanburg Co., was formerly a corporation with its principal office at 105 Bedford Avenue, Brooklyn, N. Y. Said

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corporation was dissolved and ceased all business activities in or about the month of December, 1939.

Respondent, Lucas Kil-Tone Co., was formerly a corporation with its principal office at 322 Race Street, Philadelphia, Pa. Said respondent was dissolved and its assets sold on August 31, 1941.

Respondent, Pittsburgh Plate Glass Co., Corona Chemical Division, is a corporation, with its principal office at 235 East Pittsburgh Avenue, Milwaukee, Wis. This respondent is not a member of respondent Association. Said respondent did, on two occasions, contribute funds to respondent Association, the last of which contributions to said Association was made on October 13, 1936. Since October 13, 1936, said respondent has neither contributed to, nor cooperated with, the respondent Association or its members in any of its or their activities.

PAR. 2. The respondent members and the respondents, Ansbacher-Siegle Corporation and General Chemical Co., have been for more than 2 years last past, and are now, engaged in the manufacture and in the sale and distribution of various types of insecticides, fungicides, and related items. The respective respondents have caused their said products, when sold by them, to be transported from the State of location of the respective respondents to the purchasers thereof located at various points in the several States of the United States other than the States of origin of such shipments and in the District of Columbia. 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 and in the District of Columbia. At all times mentioned herein, each of said respondents has been engaged in competition with some of the other respondents and with other dealers in said products in commerce among and between the various States of the United States and in the District of Columbia in the sale and distribution of their respective products.

PAR. 3. The respondents, Phelps Dodge Refining Corporation and Tennessee Corporation, have been for more than 2 years last past, and are now, engaged in the manufacture and in the sale and distribution of monohydrated copper sulphate and certain other copper by-products and specialties. Said respondents cause said products, when sold, to be transported from the State of the location of the respective respondents to the purchasers thereof located at various points in the several States of the United States other than the State of origin of shipment and in the District of Columbia. 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 and in the District of Columbia. At all

times mentioned herein said respondents have been in competition with other corporations, partnerships, and individuals engaged in the manufacture and in the sale and distribution of monohydrated copper sulphate and certain other copper by-products and specialties in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The respondent members in cooperation with each other, and in cooperation with certain respondents who were not members of the respondent Association, and in cooperation with the respondent Association, entered into and have engaged for more than 2 years last past and particularly since on or about October 1, 1936, in an understanding, agreement, combination, or conspiracy among themselves and with and through the respondent Association and with certain respondents who were not members of the respondent Association, to restrict, restrain, and suppress competition in the sale and distribution of various types of insecticides, fungicides, and related items to customers located throughout the several States of the United States and in the District of Columbia, by agreeing to fix and maintain uniform prices, terms, and discounts at which the said items were and are to be sold to various classes of customers, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through the respondent Association as to the prices, terms, and discounts at which the said respondent members of the respondent Association, and certain nonmember respondents have sold and are offering for sale their said products to customers and to prospective customers.

Respondent members have agreed that many of the prices agreed upon should be fixed, and they have been fixed, on a delivered basis to certain consumers and to various classes of dealers. Such delivered prices included blanket charges for delivery by rail to all destinations within certain States, certain groups of States, or throughout the entire United States. Actual rail freight was allowed to purchasers at their respective destinations but no allowance was made on shipments by truck. The purpose and effect of fixing prices on a delivered basis was to prevent differences in the cost of delivery from the members' respective shipping points creating differences in the delivered cost to any buyer at a given destination.

Agreements were also entered into among respondent members to fix and maintain certain uniform price differentials between carload and less than carload lots and certain uniform discounts or price differentials for payment of invoices within certain fixed periods of time. Agreements were also entered into among respondent members to fix the prices to be quoted on all Government, State, and municipal

bids and to require their dealers to maintain certain uniform resale prices.

PAR. 5. Pursuant to and in furtherance of the above-described general understanding, agreement, or conspiracy entered into by said respondents, the said respondents have entered into numerous agreements on specific occasions and have concertedly and cooperatively done the following acts and things:

1. Certain of said respondents organized in February of 1934 the respondent Association, Agricultural Insecticide & Fungicide Association. The respondent Association since its organization has acted as a clearing house for the exchange of statistical, price, and trade information which was submitted to it by the respondent members. The information so collected and disseminated by the respondent Association has included reports as to the sales of various types of insecticides, fungicides, and related items. The said reports have included the prices, terms, and discounts at which these said items were sold or offered to be sold by the various respondents, and have included advance notice of future prices.

For instance, on March 11, 1937, The Sherwin-Williams Co., Inc., one of the respondent members herein, telegraphed to L. S. Hitchner, then president of the respondent Association, as follows:

Effective March fifteenth advancing schedule standard arsenate lead one-cent pound to base price eleven and one-half cents east and west of Rockies.

On the same day Mr. Hitchner wired this information to The J. W. Woolfolk Co., another respondent member herein. On March 12, 1937, the respondent member The California Spray-Chemical Corporation also telegraphed to Mr. Hitchner that it was advancing its schedules on arsenate of lead 1 cent a pound to the base price of 11½ cents in dealer carloads, and that it was advancing its schedule on basic lead ¾ of a cent per pound to the base price of 12 cents in dealer carloads effective as of March 15th. On the same day Mr. Hitchner wired this information to the respondent member The J. W. Woolfolk Co.

There was an agreement and understanding among respondent members that they would adhere to the prices which they respectively filed with respondent Association and alleged failures to so adhere were reported to, and policed by, the Association.

2. The said respondent members have from time to time at convenient locations within the United States, attended regular meetings of its membership held under the auspices of respondent Association. These meetings have been widely attended by the respondent members of the Association, and at the meetings the respondent members

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have discussed trade and competitive conditions in the industry and have agreed upon, and established, trade policies which are to be followed and prices which are to be charged by the respondent members and the respondents cooperating with them in the interstate sale and distribution of their said products. Meetings have been held at various dates since January 1936, in such widely separated places as Augusta, Ga.; Spring Lake, N. J.; Buffalo, N. Y.; New York, N. Y.; Atlanta, Ga.; Pine Valley, N. J.; Absecon, N. J.; Philadelphia, Pa.; Boca Raton, Fla.; Chicago, Ill.; Greenwich, Conn.; Portland, Oreg.; White Sulphur Springs, W. Va.; Del Monte, Calif.; and Cleveland, Ohio.

One such meeting of the respondent Association was held in New York, N. Y., on July 26 and 27, 1937. Among the respondent members represented at this meeting were The Tobacco By-Products and Chemical Corporation, General Chemical Co., The Chipman Chemical Co., Inc., The American Agricultural Chemical Co., Ansbacher-Siegle Corporation, The Acme White Lead and Color Works, Grasselli Chemical Division of E. I. duPont de Nemours & Co., Inc., The California Spray-Chemical Corporation, Lucas Kil-Tone Co., The Niagara Sprayer and Chemical Co., Inc., The Commercial Chemical Co., The Sherwin-Williams Co., Inc., Dow Chemical Co., The J. W. Woolfolk Co., and L. S. Hitchner, president, and June C. Heitzman, secretary of the respondent Association. At this meeting the following matters were discussed: trade and competitive conditions in the industry with especial emphasis on so-called fair trade practices; proposed uniform sales contract forms; the coloring of lead and calcium arsenates; package merchandising and standardization of containers; merchandising through distributors with especial emphasis on the recommendation that the principles of the distributor service fee should be adopted and continued through 1938 and that the requirements for service fees should be limited to a report of total pounds sold to dealers; the using of all legal efforts to police filed price schedules; a continuance of the present price basis with no change in quoting full dealer price and issuing credit memorandum to follow, to cover service fees monthly as the material is sold; increased service fees; the removal of distributors' names from the list during the season should such action be necessary; the continuance of the 1 percent cash discounts for the season of 1938; the protection of prices in certain territories; the withholding of outbound freight allowances on shipments from jobbers' stocks; the withholding of service allowances on sales to companies in which the distributor is financially interested; and the discouraging of pool cars.

In February of 1937 at a meeting of the respondent Association there was set up a dealer price on 20-20-60 dust of \$5.20 for carloads and \$5.70 for less than carloads.

On September 30, 1937, the respondent, Hitchner, president of the respondent Association; advised the respondent, Ansbacher-Siegle Corporation, by telephone that the minimum price which it should quote on all government, State or municipal bids for lead arsenate was 13 cents delivered. Mr. Hitchner further advised that this procedure had been agreed to by Sherwin-Williams, Corona, Dow, General, and others.

The carload price of lead arsenate was advanced by respondents from 9½ cents in October 1936 to 10½ cents in February 1937, 11½ cents in March 1937, and 13 cents in October 1937. In February 1938, it declined to 12½ cents.

Respondents attempted to police the enforcement of prices. At an executive meeting of the respondent Association held at the Hotel Biltmore, New York, N. Y., on December 2, 1937, a report made by the respondent, Ansbacher-Siegle Corporation, relative to the Gulf States Fertilizer Co. of Gulfport, Miss., which report shows not only respondents' activities in policing prices but also in selecting distributors, stated in part as follows:

We are satisfied Gulf States can be depended upon to maintain the industry's resale prices, terms and conditions and Ansbacher will undertake to "police" the account, provided they can be sold on an equitable basis with other legitimate distributors.

At the same meeting respondent, Ansbacher, reported on Grand Rapids Growers, Inc., in part as follows:

Ansbacher has sold Grand Rapids for the past two years and we have yet to receive a complaint that they have violated any price schedules or quoted special dealer prices at any time. They have been confronted with flagrant violations; for example, the pool car to growers at Peach Ridge made by Field of Shelby, Michigan, an unlisted distributor of Corona Chemical Company. This business was offered to Grand Rapids Growers but refused by them.

We are confident that Grand Rapids is not only qualified as a distributor but will function strictly in accordance with the insecticide industry's requirements.

At a meeting of the respondent Association held in Rochester, N. Y., on December 10, 1937, it was announced by Mr. Hart, vice president and sales manager of the respondent member, The Niagara Sprayer and Chemical Co., Inc., that the New York Insecticide Co. would not be represented at the meeting but that Mr. O'Brien of the New York Insecticide Co. had expressed his intention to cooperate and had stated that on lime sulphur solution his proposed price for 1938 would be on the 1937 basis, namely, to dealers in drums for 13 cents per gallon, less 1 cent per gallon for drums, and less 1 cent per gallon for cash.

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It was agreed at the meeting that lime sulphur prices would not be filed until February 15, 1938, and it was further agreed that the cash and time prices as established by the New York Insecticide Co. would be met.

On January 5, 1938, Taylor Chemical Works, Ltd., one of the respondent members, wrote in part to The J. W. Woolfolk Co., another respondent member, as follows:

* * * we have reasonable cause to believe that General Chemical Company has made a price on lime sulphur with full freight allowed to destination, the buyer then turning around and hiring a trucking company to deliver this at considerable less than the LCL freight, which makes the buyers net delivered cost less than published delivered price. Do you think that this is according to the letter of regulations? If you do not, what would you suggest that the proper action would be?

On January 6, The J. W. Woolfolk Co. replied to this letter in part as follows:

With regard to the General Chemical Company's proposal, we think that it would be better for us to handle this matter and suggest that you give us the names of the buyer and, if possible, the trucking company and the quantity of material involved and we will handle it by air mail with the proper parties.

3. The respondent Association compiled and distributed to respondent members and to cooperating nonmember respondents, lists which contained the names of those dealers in insecticides, fungicides, and related items who were to be sold by the respondent members and the cooperating nonmember respondents on a wholesale basis to the exclusion of other dealers in said products which said lists were known as distributor guides. The respondent Association has assisted in policing the respondent members and the cooperating nonmember respondents in the enforcement of the use of such distributor guides, which were white lists of dealers jointly recognized and agreed upon by respondents as entitled to certain prices.

On October 17, 1935, the Association mailed out a special bulletin dealing with the merchandising policy for the industry and attaching thereto "a suggested method of procedure based on recommendations received from the different members of the industry." The bulletin stated that the industry would recognize

three classes of buyers performing special functions for the industry other than that of a jobber or dealer, thereby entitling them to special considerations from the posted jobber open price schedule.

The bulletin advised that B and C buyers must be registered with the Association and that their names should be added or rejected by "mutual agreements," and informed the respondents that the classification of names listed in Class "B" and "C" should be reviewed by

the board of directors at their next meeting and any additions, deletions, or corrections to these facts should be made at the earliest possible date.

It was further advised that this was tentative, subject to approval, and that no action should be taken on any names, indicated, pending general approval.

Meetings of the respondent Association were also held from time to time for the purpose of approving the names of dealers in insecticides, fungicides, and related items who were to be recognized by the respondents as distributors of such products and at such meetings the names of dealers to be so recognized as distributors of such products were submitted and voted on by those present. The names approved for recognition as distributors were added to the list and the names disapproved were deleted therefrom. Printed copies of the list of distributors as finally approved were distributed among the respondents by the respondent Association.

4. The respondent Association compiled and distributed to the respondent members and to the cooperating nonmember respondents, lists of dealers in various types of insecticides, fungicides, and related items, who were to be recognized by the respondent members and by the cooperating nonmember respondents as retail dealers in said products and were to be sold as such retail dealers in said products to the exclusion of other dealers therein.

For instance, at a meeting held just prior to June 6, 1935, in Corpus Christi, Tex., it was agreed that the distributors would at a subsequent meeting present lists of the retail dealers that they sold in the Corpus Christi area. The lists would then be gathered at a subsequent meeting and gone over, and the names passing as approved retail dealers would be adopted as the lists that each distributor would follow and no other retail dealers would be created until the following season. It was agreed that this list of approved retail dealers would be furnished to the various manufacturers of insecticides, fungicides, and related items.

5. The respondent Association has maintained and now maintains an open price filing system whereby it relays to respondent members and to cooperating nonmember respondents, advance notice of immediate and future price rises and declines.

PAR. 6. The respondents, Phelps Dodge Refining Corporation and Tennessee Corporation, entered into an agreement, combination, or conspiracy with some of the members of respondent Association to establish uniform terms and conditions of sale, and to fix and maintain the prices, and to designate certain respondent members and the respective customers who were to purchase and resell monohydrated

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copper sulphate and certain other copper byproducts and specialties. At a meeting held on November 15, 1937, which was presided over by respondent Hitchner of the respondent Association, there were present representatives of the respondents, Phelps Dodge Refining Corporation, Tennessee Corporation, General Chemical Co. and Ansbacher-Siegle Corporation, and of the respondent members, The Chipman Chemical Co., Inc., The Sherwin-Williams Co., Inc., E. I. duPont de Nemours & Co., Inc., Lucas Kil-Tone Co. and The Niagara Sprayer and Chemical Co., Inc. At this meeting, it was agreed that copper producers would sell only to a selected list of agents. It was also agreed that sales would be made in car lots to legitimate dealers and jobbers at the established price schedule only. A committee was appointed to prepare and submit, and prepared and submitted at a subsequent meeting, a list of agents and proposed price schedules. At this later meeting, prices were agreed upon and established, and the following names were selected as agents: DuPont, General, Ansbacher, Sherwin-Williams, Niagara, Chipman, Woolfolk, Allegheny, American Agricultural, Florida Agricultural Supply, New York Insecticide, and Corona.

PAR. 7. The directors of respondent Association hereinbefore named have, during their respective terms of office, had general control and supervision of the activities of the Association, including the formulation of policies; and the officers hereinbefore named, during their respective terms of office, have, under the supervision and direction of said directors, had control of the active affairs of respondent Association, including the collection and distribution to the members of said Association of said statistical, price, and trade information.

PAR. 8. The aforesaid understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinabove found, have had and now have the tendency and effect of unduly lessening, restricting, restraining, and suppressing competition in the sale and distribution of insecticides, fungicides, and related items in commerce among and between the various States of the United States and in the District of Columbia, and of enhancing the prices of said products and maintaining prices at artificial levels above the prices which would prevail under normal, natural, and open competition between said respondents; and also tend to create a monopoly in said respondents in the manufacture and in the sale and distribution of said products in said commerce.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of competitors of respondents and of the public and

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have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of insecticides, fungicides, and related items in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in said products; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein (except Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., Allegheny Chemical Corporation, and Pittsburgh Plate Glass Co.) and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and which waives the filing of a report upon the evidence by the trial examiner; 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 said respondent Agricultural Insecticide & Fungicide Association, its officers, agents, and employees; the following respondent corporations, The Acme White Lead and Color Works, The American Agricultural Chemical Co., The American Cyanamid and Chemical Corporation, The American Nicotine Co., Inc., The California Spray-Chemical Corporation, The Chipman Chemical Co., Inc., George W. Cole and Co., Inc., The Hercules Glue Co., Ltd. (a corporation trading under the name of Colloidal Products Corporation), The Commercial Chemical Co., Derris, Inc., Dow Chemical Co., E. I. duPont de Nemours & Co., Inc., The Latimer-Goodwin Chemical Co., The Niagara Sprayer and Chemical Co., Inc., The Nicotine Production Corporation, John Powell & Co., Inc., The Sherwin-Williams Co., Inc., The Southern Acid & Sulphur Co., Inc., The Stauffer Chemical Co., Inc., The Tobacco By-Products and Chemical Corporation, The J. W. Woolfolk Co., Ansbacher-Siegle Corporation, General Chemical Co., Phelps Dodge Refining Corporation, and Tennessee Corporation, their officers, agents, and employees; and the following individual respondent-

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ents, R. N. Chipman, L. S. Hitchner, June C. Heitzman, H. D. Whittlesey, H. P. Mansfield, J. B. Cary, J. H. Boyd, A. J. Flebut, R. E. Demmon, G. F. Leonard, G. E. Riches, and J. M. Taylor, general partners, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., and their respective representatives agents, and employees, in connection with the offering for sale or sale and distribution of agricultural insecticides, fungicides, and related chemicals and items for similar uses in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, carrying out, directing, instigating, or cooperating in, any common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents, with or without the cooperation of others not parties hereto, for the purpose, or with the tendency or effect, of fixing the prices for, or of restricting, restraining, or eliminating competition in, the sale in said commerce of agricultural insecticides, fungicides, or related chemicals and items for similar uses, and from doing any of the following acts and practices pursuant thereto.

1. Fixing, establishing, or maintaining the prices, whether on a delivered basis or otherwise, or the charges at which the products of said respondents are to be sold or offered for sale, or fixing, establishing, or maintaining any method of pricing which deprives buyers of opportunity to obtain more favorable terms from one respondent corporation than from another, or fixing, establishing, or maintaining any discounts, terms, or conditions of sale.
2. Adhering to any price list compiled or distributed by or on behalf of any of the said respondents.
3. Imposing, or attempting or threatening to impose, any penalty on, or coercing, or attempting to coerce by any means, any manufacturer who fails or refuses to adhere to or adopt charges, discounts, terms or conditions of sale, prices, of pricing methods fixed or established by said respondents.
4. Exchanging, distributing, or relaying among respondent members or through respondent Association or any other medium or central agency, price lists or other information showing current or future prices or current or future terms or conditions of sale.
5. Determining or attempting to determine by any means, either directly or indirectly, which purchasers shall be recognized as jobbers of, or as retail dealers in, and thus entitled to certain price differentials on, said products manufactured and sold or offered for sale by said respondents.

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6. Furnishing to the respondent Association, or to any other central medium or agency, any list or lists of jobbers or retail dealers or any classification of customers as jobbers or retail dealers and thus entitled to certain price differentials on products sold or offered for sale by any of the said respondents.

7. Compiling or distributing in any manner, either directly or indirectly, between and among any of the respondents, lists of names or classifications of dealers or users who are to be sold by any of said respondents.

8. Holding or participating in any meetings, discussions, or exchanges of information concerning proposed or future prices, terms or conditions of sale, or concerning any actual or proposed recognition or classification as jobber or retail dealer of any customer to whom the products of any of said respondents are sold or offered for sale.

9. Taking any action for the purpose, or with the effect, of preventing or hindering any dealer or user or any class of dealers or users from obtaining the products manufactured by the respondents, or any of them, at such prices and terms as may be satisfactory between the individual buyer and seller.

10. Continuing or resuming by tacit and common consent among two or more respondents, any practice herein forbidden when such continuation or resumption results in purchasers being prevented from obtaining more favorable prices, terms, or conditions of sale from one of respondent corporations than from the others.

It is further ordered, That the complaint herein be, and it hereby is dismissed as to the following named respondents: Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., Allegheny Chemical Corporation, and Pittsburgh Plate Glass Co.

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

Syllabus

IN THE MATTER OF
 SUCCESS PORTRAIT COMPANY, ETC., ET AL.

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

Docket 4522. Complaint, Mar. 31, 1942.¹—Decision, Aug. 3, 1942

A drawing is a representation produced by the art of drawing, a work of art produced by pen, pencil, or crayon; a crayon drawing is the act or art of drawing with crayons; the pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a paste; and a drawing made with colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is understood by artists who paint pictures, photographers who color photographs, and the general public, as an original representation by the painter of a design, image, or object on a surface by means of paints, water color, or oil; a freehand image painted directly on the surface without the intervention of any mechanical means, such as a camera; a water color is a painting with pigments for which water is used as a solvent; and an oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other materials, without the aid of photography.

Where a corporation, engaged in producing and in selling and distributing colored or tinted enlargements and miniatures of photographs and snapshots, and frames therefor; the officers and directors thereof, who exercised a substantial measure of control over the other associates as hereafter set out; some fifteen "operators" who cooperated with said corporation in the sale and distribution of said products, employing numerous persons in various capacities such as "crew managers", "sales agents", "record managers", "proof passers", "field artists" and "delivery men" to contact the purchasing public; and some 30 "sales agents" of one or more of said "operators", who visited homes in cities, towns, and rural communities of other States, carrying purported typical samples and soliciting orders;

In carrying on the competitive sale of said products under a sales plan in which all cooperated and under which said corporation (1) furnished to said "operators" and "sales agents", upon their order, as well as to prospective agents, equipment including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases; (2) caused orders or contracts for its products to be entered on printed forms provided by it, which contained, in some cases, its own corporate name and address as well as the name or trade name of the "operator" through whom the order was secured, and, in other instances, only the trade name of the operator, using the corporation's address, and also stated, in some cases, that the "operator" was "affiliated" with or a "subsidiary" of said corporation; (3) furnished "operators" and "sales agents", if desired, with identification and credential certificates and letters; (4) was in possession at all times of the names and addresses of customers whose pictures it was making; (5) when so

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requested, handled the mail from customers of "operators" and "sales agents," which was addressed to many of them at said corporation's own address; (6) paid visits to various "operator" organizations, instructing them regarding sales technique and the obtaining and improving of business; (7) required daily reports from salesmen in the field covering the canvassing of customers, proof passing, and the delivery of products; and (8) on occasion wrote types of sales talks deemed appropriate for use by "sales agents" or "operators," conferred with latter regarding trade names to be employed by them and contract forms to be used; and handled post office money orders payable to various trade name companies sent in by the "operators," making use thereof, and also open accounts and financial transactions for such "operators," maintaining close supervision over their business affairs and those of the "sales agents," and on occasion urging the discharge of the latter—

- (a) Made use in order blanks and contracts and otherwise of such terms as "Hand Painted Portrait" in soliciting orders for and designating and referring to its aforesaid tinted or colored enlargements or miniatures;

Notwithstanding the fact said products were not paintings as understood by the general public as being free-hand images painted in water colors or oil without the intervention of any mechanical means, but were accomplished through spraying powdered pigment in solution upon the photographic reproduction through use of a mechanical air brush and a camel's hair brush; and

Where said "operators," selling and distributing said colored enlargements, miniatures, and frames, under the aforesaid general plan and program—

- (b) Made use of such trade names as "Old Master Portrait Company," "Superior Art Studios," "Colonial Air Institute," and numerous others, along with words, in some instances, "subsidiary of" or "affiliated with," followed by name of said corporation; and employed therewith as the address that of said corporation;

Notwithstanding the fact that with the exception of one or two, none of them had owned, operated or conducted, directly or indirectly, any "art studio," "institute of art," or place of business at Chattanooga or elsewhere, or the equipment essential in producing photographic enlargements or miniatures, or employed or controlled artists or operators skilled in the use of air or paint brush, or in drawing or pastel, or maintained an office or office force at address in question, with the exception of two who employed a secretary and conducted correspondence therefrom; said trade names were used merely to promote the sale of products actually produced by such corporation; and in no instance was operator a business "subsidiary" or "affiliate" thereof, but said terms were employed to induce customers to believe they were dealing with an operating established house, and served to refer customers to corporation in question for a financial rating of the trade-name company and the operator using it;

With result that prospective purchasers were led to believe that they were dealing with representatives of sales studios or associations or art institutes, and thereby confusing the businesses conducted by said "operators" with genuine art associations, art studios, or art institutes, and with further result that liability to purchasers for the representations, acts and practices of "operators" and "sales agents" was evaded, and business rating, credit, prestige, and standing to which they were not entitled were given to the trade names employing the same business address as that of afore-

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said corporation, and particularly to those which were represented as its subsidiaries or affiliates; and

Where "sales agents" visiting homes and carrying with them samples which had been reproduced and built up from carefully selected subjects of highest photographic value, the colored enlargements of which had been skillfully done with great care and detail and resembled closely, in many cases, paintings done by hand;

(c) Represented that the company which the particular agent represented was prepared to duplicate or reproduce such type of work and that the "studio's" or "art institute's artist" would "paint" or "make a painting" or "hand painted portrait" or "hand painted stream-lined portrait" of the picture or snapshot of some member of the customer's family, and that an "oil painting" would be made to be finished in oil by hand on linen, silk or Japanese silk, the agent referring from time to time to the "portrait painting" as being made by the trade-name company which he represented, and address of which was the same as that of aforesaid corporation;

The facts being that corporation in question in various instances, due to being furnished with photographs or snapshots of inferior quality, incapable of producing good enlargements, was unable to produce finished products equal in appearance to the samples displayed; customers complained that the "paintings" or "pictures" made for them were inferior to the samples; and, as aforesaid, they were not paintings or finished in oil by hand on linen, silk, or Japanese silk;

(d) Falsely represented at times that an art studio or academy of art was being maintained in which art classes were being held, and that if the prospective purchaser would lend to the agent a photograph or snapshot, it would be copied by hand in oil colors by an art student attending such classes; and

(e) Falsely represented in many instances that the sale was an "introductory offer" only; that only a limited number of paintings was to be placed in any given town or locality, that the customer would pay only for the work done by the artist, the picture to cost nothing; that the "painting" was being offered at a reduced price and, that, in consideration of such fact, it was expressly agreed that it was to be "protected and exhibited"; and in other instances designated the price named as an "advertising price" or represented that the picture was being offered merely at the "cost of production"; and

Where some of said "operators" and "sales agents"—

(f) Represented to customers and prospective customers that a drawing contest would be held in a certain community for the purpose of deciding who should be one of the few "lucky persons" to have "paintings" placed on exhibition in their homes in connection with a "special advertising offer" or "special introductory offer," and represented that the sealed envelope produced in said connection by the "sales agent" contained various slips of paper, most of which were blank, but a few of which were certificates or coupons entitling the holder to two genuine hand-painted portraits finished in oil for the sum of \$10 or one for \$7.50—or at various times at different prices under which the "lucky" drawer got a picture for half price or two for the price of one;

The facts being that the slips were so manipulated that all acceptable customers invariably drew a "lucky" coupon; the alleged contest was a deceptive scheme, the sole purpose and result of which were to induce prospective purchasers to believe that if they were lucky they would obtain pictures at

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prices greatly below those which other customers had to pay and were thus induced to enter into contracts for purchase in which the coupon gave them no advantage whatsoever; and

Where a second sales agent, designated as "field artist" or "instructing artist," following the transmission of an order by the first salesman, upon his appearance with an uncolored rough proof or "sketch" of the enlarged photograph, for which he collected the agreed cost—

- (g) Informed the customer for the first time that a frame for the picture, which was finished in octagonal shape, could not be purchased from any source other than through his company and that the portrait would not hold its color and be of any value unless framed, calling the customer's attention from time to time to his agreement to "protect" and "exhibit" the portrait and to his "obligation" under the contract to buy a frame, which in various instances had not been mentioned before, and, in the event of the customer's refusing to buy a frame, repeated through a third agent aforesaid reasons why a frame must be bought, and in some instances refused to deliver the completed picture regardless of whether or not it had been paid for in full, and refused to return the original photograph loaned by customer until the frame was ordered;

The facts being that said sales agent represented as a "field artist" or "instructing artist" was merely a delivery man or frame salesman; and "operators" in many instances concealed from purchasers at time of order the fact that finished product would be delivered in a frame of peculiar octagonal convex shape, and that it would be impossible to obtain a frame to fit said picture except from or through said corporation or others at prices fixed by them; their efforts were directed largely to the sale of frames, and their sales plan, and the various calls of the sales agents, were primarily for the purpose and with the effect of forcing the customer to buy something he did not originally intend to buy; and

- (h) Represented as regular price or value for frames, prices, and values which were in fact substantially in excess of those at which frames of similar type and quality are usually sold;

With the result that the use of said typical representations, acts, and practices, employed as aforesaid, led purchasers mistakenly to believe that said representations and implications were true, and caused a substantial number to buy substantial quantities of their said products:

Held, That such acts and practices, as above set forth and effected through the use of a sales plan in which said corporation and others cooperated, as aforesaid, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. Marshall Morgan for the Commission.

Whitaker, Hall, Haynes & Allison, of Chattanooga, Tenn., for the corporate respondent and the officers and directors thereof.

Mr. Frank J. Wideman, of Washington, D. C., for the individual operators and salesmen.

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

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Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly 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. Respondent, Success Portrait Co. (hereinafter referred to as corporate respondent), is a corporation organized and doing business under and by virtue of the laws of the State of Tennessee. Said corporate respondent also trades as Chattanooga Art Medallion Co. and as Art Trade Studios.

Respondent, James Morton McConnell, is president and a director of corporate respondent, Success Portrait Co.

Respondent, Ozro Absolem Brammer, is vice president and a director of said corporate respondent, Success Portrait Co.

Respondent, George Nathan McConnell, is secretary and a director of said corporate respondent, Success Portrait Co.

Respondent, Jesse Roy Hodge, is treasurer and a director of said corporate respondent, Success Portrait Co.

The above individual respondents have their principal offices and place of business with corporate respondent at 1301 McCallie Avenue in the city of Chattanooga, State of Tennessee, and they direct and control the business policies and activities of said corporate respondent in carrying out the acts and practices hereinafter alleged.

Respondents, W. S. Edwards and Ida Lillian Wilson Edwards, are individuals, trading as Superior Art Studios and as Colonial Art Institute and as Old English Art Co., and as such, are associated with and are representatives of said corporate respondent, Success Portrait Co.

Respondent, Jack E. Bramley, is an individual, trading as Streamline Art Co. His address is box 242, Little River Station, Miami, Fla., and he is associated with and a representative of said corporate respondent.

Respondent, C. A. Hicks, is an individual, trading as H. B. Art Co. His address is San Antonio, Tex., and he is associated with and a representative of said corporate respondent.

Respondent, N. W. Frazier, is an individual, trading as Federal Art Co. His address is box 720, Tarboro, N. C., and he is associated with and a representative of said corporate respondent.

Respondent, J. E. Woods, is an individual, trading as Paramount Art Co. His address is route 1, Shelby, N. C., and he is associated with and a representative of said corporate respondent.

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Respondent, J. P. Kennington, is an individual, trading as Kennington Art Studio. His address is Kershaw, S. C., and he is associated with and a representative of said corporate respondent.

Respondent, S. C. Porter, is an individual, trading as Peerless Studio. His address is Corpus Christi, Tex., and he is associated with and a representative of said corporate respondent.

Respondent, R. H. Page, is an individual, trading as Page Art Co. His address is 135 West Second Street, Washington, N. C., and he is associated with and a representative of said corporate respondent.

Respondent, S. P. Rogers, is an individual, trading as Rogers Art Co. His address is Union, S. C., and he is associated with and a representative of said corporate respondent.

Respondents, H. F. Wilson and Jack Howard, are individuals, and their addresses are Grenada, Miss., and Fair Mount, Ga., respectively. Said respondents are associated with one another and are trading as Wilson Portrait Co. and as Wilson Art Association, and they are associated with and representatives of said corporate respondent, Success Portrait Co.

Respondent, T. F. Keegan, is an individual, trading as World Art Co. His address is Vero Beach, Fla., and he is associated with and a representative of said corporate respondent.

Respondent, R. L. Gaddis, is an individual, trading as Artcraft Portrait Co. His address is Bartow, Fla., and he is associated with and a representative of said corporate respondent.

Respondent, E. T. Greenwood, is an individual, trading as Vogue Art Studio. His address is Paces, Va., and he is associated with and a representative of said corporate respondent.

The above-named respondents, W. S. Edwards, Ida Lillian Wilson Edwards, Jack E. Bramley, C. A. Hicks, N. W. Frazier, J. E. Woods, J. P. Kennington, S. C. Porter, R. H. Page, S. P. Rogers, H. F. Wilson, Jack Howard, T. F. Keegan, R. L. Gaddis, and E. T. Greenwood are hereinafter on occasion referred to as respondent representatives.

Respondents, Neal Allen, Ruth Attix, Henry Acie Barrentine, Lee Beaver, Tom Bell, Earl Bigby, H. P. Bingham, R. S. Bishop, James W. Boulware, Ted Bramley, Catherine Broward, N. B. Broward, Lloyd Brown, H. V. Caton, L. Clark, O. D. Clayton, Robert Dodd, George F. Donehue, Joseph Durrance, Edith Edmondson, Jack Edwards, Willis G. Edwards, J. F. Evans, Thos. Gaddis, V. Gantt, Jimmy Greenwood, Juanita Holland, R. F. Jones, A. S. King, L. H. Marsden, Thelmar Marshall, J. H. McCoy, F. H. McGaughey, H. D. McGaughey, Elizabeth Melvin, O. R. Melvin, Carl Newton, Grayce Nix, J. W. Parker, Letha Revels Putney, Jack Ritchie, T. E. Savage, Mary Schultz, Lillian Shepard, G. C. Sours, R. C. Speece, Marshall Steadham, John G.

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Tierney, Stella Timmerman, C. J. Wallentelsz, Kay Harriet Whitten, O. A. Willocks and Chester Wofford, are individuals and are sales agents and employees of one or more of the respondents hereinbefore named and described. Said respondents are hereinafter on occasion referred to as respondent sales agents.

All of said individual respondents maintain their principal office and place of business at 1301 McCallie Avenue, Chattanooga, Tenn.

All of the respondents are engaged in the sale and distribution of tinted or colored enlargements, or tinted or colored miniatures, of photographs and snapshots and frames therefor. Respondents cause and at all times mentioned herein have caused said products, when sold, to be transported from the State of Tennessee to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondents have been, and are now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of tinted or colored enlargements and tinted or colored miniatures of photographs and snapshots and frames therefor.

PAR. 3. Respondents, during the 3 years or more last past, have entered into and carried out various understandings, agreements, combinations and conspiracies with each other to sell tinted or colored enlargements and tinted or colored miniatures of photographs and snapshots and frames therefor to the purchasing public through the use of false, misleading, and deceptive acts, practices, and methods.

PAR. 4. In the course and conduct of said enterprise, said corporate respondent is engaged in the business of producing and distributing colored or tinted enlargements and miniatures of photographs and snapshots and the sale of frames therefor, and in the sale and distribution thereof the officers and directors of said corporate respondent, in their individual and respective official capacities, dominate, direct, and control the corporate policies, affairs, and activities of said corporate respondent and exercise a substantial measure of direction and control over the organization, management, policies, operation, and financing of the remaining respondents herein in carrying out the unfair methods of competition and unfair and deceptive acts and practices herein alleged.

Associated with said corporate respondent are various operators, associates, or representatives who, through the medium of various and sundry trade names, offer for sale, sell and distribute corporate respondent's products to the consuming public. Respondent representatives are such operators, associates, or representatives of said corporate respondent.

The respondent representatives employ numerous persons in various capacities, such as "crew managers," "road managers," "proof passers," "delivery men," and salesmen or sales agents, who contact the purchasing public in the sale, distribution and delivery of the products produced by the corporate respondent and sold and distributed by the corporate respondent and the respondent representatives. Respondent sales agents are connected with the respondent representatives in some capacity in connection with the sale and distribution of said corporate respondent's products.

PAR. 5. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance thereof, said respondents, acting in concert and cooperation with each other and with divers other persons whose names are to the Commission unknown, have engaged in various unfair and deceptive acts and practices in commerce and various unfair methods of competition in commerce, of which the following are typical:

1. In buying respondents' products, purchasers and prospective purchasers are led to believe by respondent representatives and respondent sales agents that they are contracting or dealing with duly constituted representatives or sales agents of existing studios or art companies whose names appear on the various contract forms, order blanks, or identification certificates produced by said representatives or sales agents in contacting said purchasers.

In truth and in fact, the names of such studios or art companies are wholly fictitious in that there are no such studios or art companies in existence, but to the contrary these are merely trade names used by the various respondent representatives engaged in the sale of products produced and distributed by Success Portrait Co. These various contract forms, order blanks, and identification certificates give the street address of Success Portrait Co. as their own. Respondent representatives and respondent sales agents do not in any way operate art companies, art associations, or studios, nor do they in any manner engage in the business of making, enlarging, or the tinting of photographs. The Success Portrait Co.'s products are sold by such agents, representatives and canvassers operating under various fictitious names, thereby misleading the public as to the real name of the manufacturer of the product. Respondent representatives and respondent's sales

agents are furnished with identification certificates and credentials which are purportedly signed by one of the fictitious studios or art companies. These are exhibited by respondent representatives and respondent sales agents when interviewing various prospective purchasers. On occasion also respondent representatives and respondent sales agents are furnished with identification certificates and credentials signed by corporate respondent Success Portrait Co., which are exhibited by them when interviewing various prospective purchasers.

Equipment, including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases enclosing samples of corporate respondent's products, is furnished by corporate respondent to said respondent representatives and respondent sales agents. The corporate respondent, in many instances, causes orders or contracts for its products to be entered on printed forms provided by it for that purpose. These order blanks or contracts contain corporate respondent's name and address, as well as the name or trade name of the respondent representative through whom the order is secured. In such order blanks it is variously stated that said respondent representative is affiliated with or is a subsidiary of said corporate respondent. When an order is secured, said order blanks or contracts are signed by the respondent representative securing the order as "representative" or "company representative" on a line provided therefor.

Typical of the form of order blank or contract used by the respondents under the trade names mentioned herein, and under various other trade names to the Commission unknown, is the following:

SUPERIOR ART STUDIOS
Subsidiary of Success Portrait Company
Home Office, 1301 McCallie Ave.
CHATTANOOGA, TENN.

Sketching and Portrait Painting

THIS CERTIFICATE entitles the holder to one HAND-PAINTED STREAM-LINE PORTRAIT, size 9 x 14, for the producing cost of \$2.98 *unframed*.

To introduce this grade of art, we are placing only a limited number under this offer. You will be notified by mail when proof of your portrait is ready. It will then be shown at your residence when the \$2.98 *must be paid*.

In consideration of the reduced price at which this portrait is placed, it is expressly agreed that it shall be properly protected and *exhibited*.

Verbal agreements, other than herein stated, will not be recognized.

We guarantee the return of your photograph with the finished work.

COUNTERMANDS NOT RECOGNIZED
PAY THE MAN WHO SHOWS THE PROOF

Date _____ Representative _____

The foregoing business arrangement is used by the respondents for the purpose of evading liability to purchasers for various false and misleading statements and representations which are made in the sale of respondents' products and to give prestige to the various trade names used by respondent representatives and respondent sales agents. The so-called "paintings," "hand-painted portraits," "polychrome portraits," "streamline portraits," or "miniatures" produced, sold and distributed by respondents are not portraits, miniatures, or paintings finished or produced by hand in oil colors in any sense of the word, but, to the contrary, are merely cheap, quickly made photographic reproductions costing in the neighborhood of \$1.25 each, which are tinted or colored by the use of pastel or crayon, water color or other powdered pigments soluble in water, sprayed upon the photographic reproduction in solution largely through the use of a mechanical air brush and compressed air.

2. Respondents exhibit to purchasers and prospective purchasers samples of attractively colored and finished specimens of the purported type of work to be done. Prospective purchasers are told that they may buy similar "paintings" or "portraits" from respondents at a "reduced price," "advertising price," "special introductory price," or for the "cost of production."

In truth and in fact, the so-called portraits or tinted photographic reproductions produced, sold and distributed by respondents are different from and greatly inferior in quality, workmanship, and appearance to the samples exhibited by respondents when obtaining orders for such products. In truth and in fact, such products are not sold at a "reduced price," "advertising price," "special introductory price," or for the "cost of production" but, to the contrary, the price at which respondents sell unframed tinted photographic reproductions is in excess of and above the regular and customary price for which said products usually and customarily sell in the ordinary course of business.

3. Said respondents in some instances induce the customer to lend them a photograph or kodak snapshot of the party or parties whose portrait is to be "painted" and represent that such photograph is to be used as a model or guide to the artist who is to "paint" the "portrait" and that said photograph will be returned to the purchaser with the completed work. In some instances, respondents represent that they maintain an "art institute," "art studio," or "academy of art" in which art classes are held for the purpose of giving experience to young artists and that respondents desire to obtain various photographs from which hand-painted portraits or hand-painted miniatures are to be copied and, further, that if the prospective purchaser will

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loan to the respondents a photograph or snapshot it will be copied by hand in oil colors by an art student attending such classes. Respondents further represent to the prospective purchaser that the so-called "portrait" or "oil painting" will be finished in oil by hand on linen, silk, or "Japanese" silk.

In truth and in fact, corporate respondent, Success Portrait Co., is not and never has been an art association, art studio, art institute, or academy of art, and such institutions are not now, and have not been during the times mentioned herein, owned or operated by any of the respondents herein. On the contrary, the business conducted by respondents in the production, distribution and sale of said portraits and frames is and has been nothing more, in fact, than a commercial business enterprise selling to the purchasing public for profit cheap colored or tinted photographic enlargements or miniatures and frames therefor. The use by respondents of the terms "art association," "art studio," "art company," art institute," "academy of art" and other terms of similar import and meaning misleads and deceives the purchasing public as to the character of the business actually conducted by the respondents and has caused the purchasing public to confuse respondents' business with various organizations similar in name or designation which conduct an "art association," "art studio," "art institute," "art company," or "academy of art," and which are properly designated as such.

In truth and in fact, the products produced by respondents are not portraits or oil paintings, as such terms are ordinarily understood, finished in oil, by hand, on linen, silk, or "Japanese" silk, but, to the contrary, are made with water colors, as hereinabove described, on a type of photographic print paper containing no linen or silk materials but so finished that the surface has the appearance of cloth.

4. When an order is secured, the delivery of the finished product is made at a subsequent date by a respondent representative or respondent sales agent or some individual associated with respondents other than the respondent or associate who secured the original order. The person making the delivery is represented by the respondents to be a "field artist" or "instructing artist." The picture is presented to the purchaser in a frame of peculiar octagonal, convex shape, regardless of whether or not a frame has been previously ordered. In the event the purchaser objects to the quality, design, or price of the frame, or does not desire to purchase the frame, although previously advised that there is no obligation to buy a frame, he is for the first time informed that a frame for the product may not be purchased from any source other than through the respondents; that the portrait will not hold its colors or be of any value unless it is framed; and that

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the customer has agreed in the contract to "protect" and "exhibit" the portrait and consequently under the contract must buy a frame. In the event the purchaser refuses to buy a frame, the respondents in many instances refuse to deliver the completed picture, regardless of whether or not it has been paid for in full, or to return the original photograph loaned by the customer until a frame is ordered or a claimed balance due is paid in full.

In truth and in fact, the sales agent represented by respondents to be a "field artist" or "instructing artist" is not an artist in the sense that such term is ordinarily understood by the consuming public. On the contrary, said so-called artist is nothing more than a delivery man or frame salesman operating for and on behalf of respondents. Purchasers are not advised and there is no such understanding or agreement in connection with said contracts that photographs or snapshots loaned or submitted by purchasers are to be retained by respondents until payment of any sum alleged by respondents to be due them. To the contrary, purchasers are advised by respondents that photographs loaned to respondents will be returned by respondents at the time the finished product is submitted, regardless of whether or not such product or a frame therefor is purchased. Respondents conceal and have concealed from purchasers at the time the "portrait" is ordered the fact that the finished product will be cut in an octagonal shape and will be delivered in a frame of peculiar octagonal, convex form and shape; and that it will be impossible for the customer thereafter to obtain a frame to fit said portrait except from or through respondents at prices fixed by respondents.

5. The said respondents in other instances further represent that a drawing contest will be held in a certain community for the purpose of deciding who shall be one of the few lucky persons to have respondents place paintings on exhibition in their homes in connection with a "special advertising offer" or "special introductory offer." In connection with said drawings, respondents produce a number of sealed envelopes containing various slips of paper. It is represented that most of said slips are blank and of no value but that a few are certificates or coupons which will entitle the holder thereof to two genuine hand-painted portraits finished in oil for the sum of \$10 or one such painting for \$7.50 (at various times similar offers are made at different prices). The said envelopes containing said slips are so manipulated by respondents that all prospective customers invariably draw a "lucky" coupon or certificate, of which the following is typical:

SUPERIOR ART STUDIO
1301 McCALLIE AVENUE,
CHATTANOOGA, TENNESSEE.

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For the purpose of advertising the SPECIALLY DESIGNED STREAMLINE PORTRAITS in full colors and extending our business.

The Original Holder of This
RED SEAL CERTIFICATE

is entitled to receive and take advantage of Our Special Introductory Offer. Acceptable Photographs must be furnished our representative.

This certificate is non-negotiable and redeemable only as stipulated above.

Right is reserved to withdraw certificate if Photographs are not suitable for Portraits.

Issued to-----
SUPERIOR ART STUDIO

Various other types of certificates not specifically set out herein are used by the respondent representatives and respondent sales agents in carrying out said so-called drawing contest scheme.

The holders of said "red seal certificates" or other so-called "lucky" coupons are led by the false and deceptive statements and representations of respondents and by the "fake" drawings in which the holders were "lucky" to believe that said coupon or certificate places holders at a distinct advantage in purchasing a painting or portrait and such holders are thereby induced to enter into contracts for the purchase of a so-called "painting" or "portrait." In truth and in fact, said coupon or certificate gives the holder thereof no advantage in price whatsoever, for practically all prospective purchasers are permitted to secure a "lucky" certificate or coupon and all purchasers may purchase said "paintings" or "portraits" at the price used by respondents in making the so-called "special introductory offer."

The aforesaid false and misleading statements, representations, acts, practices, and methods used by the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive but are illustrative of the character and type of statements, representations, acts, practices, and methods used by respondents to mislead and deceive members of the purchasing public and to induce the purchase of their said products.

PAR. 6. A crayon is a pencil-shaped piece of colored clay, chalk or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with pig-

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ments for which water, and not oil, is used as a solvent. A portrait in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 7. In the course and conduct of their business, respondents' selling and distributing methods are directed primarily to accomplish the sale of a picture frame at an exorbitant price and the respondents' various activities and representations in securing contracts for portraits are used to enable respondents to contact the purchaser for an opportunity to sell picture frames of cheap and inferior quality at prices which are far in excess of the prices at which frames of similar quality usually and customarily sell for in the ordinary course of business.

PAR. 8. Each of said respondents herein has acted and does act in concert and cooperation with one or more of the other respondents herein in doing and performing the acts and practices herein alleged and in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 9. The use by the respondents of the aforesaid acts, practices, and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive the purchasing public concerning the quality and value of respondents' products and the nature of the business conducted by respondents, and has led, and does lead, purchasers erroneously and mistakenly to believe that the representations and implications so made and used by respondents are true, and cause a substantial number of the purchasing public to purchase said products under the mistaken and erroneous belief that they are securing high grade, quality portraits or paintings and picture frames of exceptional value.

The use by respondents of the aforesaid acts, practices, and methods has the tendency and capacity to, and does unfairly divert trade to respondents from their competitors engaged in the sale and distribution of tinted or colored enlargements or miniatures of photographs and snapshots in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their said products. As a consequence thereof, substantial injury has been done, and is now being done, by respondents to competitors in said commerce.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged, including said understandings, agreements, combinations and

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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 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 31st day of March 1942, issued its amended complaint in this proceeding charging the above named respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 4, 1942, through their counsel Frank J. Wideman, appearance was entered and answer to said amended complaint was filed by the following respondents: W. S. Edwards and Ida Lillian Wilson Edwards, individually and trading as Old Master Portrait Co. and formerly trading as Colonial Art Institute and Superior Art Studios and Old English Art Co.; Jack E. Bramley and Grayce Nix, individually and trading as Streamline Art Co.; N. W. Frazier, individually and trading as Federal Art Co.; J. E. Woods, individually and trading as Paramount Art Co.; J. P. Kennington, individually and trading as Kennington Art Studio; S. C. Porter, individually and trading as Peerless Studio; R. H. Page, individually and trading as Page Art Co.; H. F. Wilson, individually and trading as Wilson Portrait Co.; Jack Howard, individually and trading as Portrait Art Agency; T. F. Keegan, individually and trading as World Art Co.; R. L. Gaddis, individually and trading as Arcraft Portrait Co.; E. T. Greenwood, individually and trading as Vogue Art Studio; Ted Bramley, individually and trading as Rembrandt Portrait Co.; and R. F. Jones, H. P. Bingham, F. H. McGaughey, N. B. Broward, James W. Boulware, Neal Allen, Elizabeth Melvin, Catherine Broward, Letha Revels Putney, Edith Edmonson, Carl Newton, Juanita Holland, Joseph Durrance, Willis G. Edwards, Jack Edwards, O. A. Willocks, H. D. McGaughey, R. S. Bishop, O. R. Melvin, Jack Ritchie, Lee Beaver, Marshall Steadham, Mary Schutz, C. J. Wallentelsz, Tom Bell, G. C. Sours, R. C. Speece, and A. S. King. On April 7, 1942, through their counsel, Whitaker, Hall, Haynes & Allison, appearance was entered and answer to said amended complaint was filed by the following respondents: Success Portrait Co., a corporation, and Success Portrait Co., trading as Chattanooga Art Medallion Co. and as Art Trade Studios; James Morton McConnell, individually and as president and a director of Success Portrait

Co.; Ozro Absolem Brammer, individually and as vice president and a director of Success Portrait Co.; George Nathan McConnell, individually and as secretary and a director of Success Portrait Co.; and Jesse Roy Hodge, individually and as treasurer and a director of Success Portrait Co. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the aforementioned respondents through their respective counsel, Frank J. Wideman, and Messrs. Whitaker, Hall, Haynes & Allison, and by 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 said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceedings without the presentation of argument or the filing of briefs, counsel for said respondents expressly waiving the filing of report upon the evidence by the trial examiner.

Following service of said amended complaint upon him, respondent, S. P. Rogers, individually and trading as Rogers Art Co., on April 20, 1942, filed his answer to said amended complaint. The Commission thereafter, by order entered herein, granted the motion of respondents, S. P. Rogers, for permission to withdraw his said answer and to substitute therefor 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 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 amended complaint, answers thereto, and stipulation, said stipulation having been approved and 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 as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Success Portrait Co. (hereinafter referred to as corporate respondent), is a corporation organized and doing business under and by virtue of the laws of the State of Tennessee. Said corporate respondent also trades as Chattanooga Art Medalion Co. and as Art Trade Studios.

Respondent, James Morton McConnell, is president and a director of corporate respondent, Success Portrait Co.

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Respondent, Ozro Absolem Brammer, is vice president and a director of said corporate respondent, Success Portrait Co.

Respondent, George Nathan McConnell, is secretary and a director of said corporate respondent, Success Portrait Co.

Respondent, Jesse Roy Hodge, is treasurer and a director of said corporate respondent, Success Portrait Co.

The above-named individual respondents have their principal office and place of business with corporate respondent at 1301 McCallie Avenue in the city of Chattanooga, State of Tennessee.

Respondents, W. S. Edwards and Ida Lillian Wilson Edwards, are individuals, trading as Old Master Portrait Co., and formerly trading as Colonial Art Institute, as Superior Art Studios and as Old English Art Co., 1301 McCallie Avenue, Chattanooga, Tenn.

Respondent, Jack E. Bramley, is an individual, trading as Streamline Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Box 242, Little River Station, Miami, Fla..

Respondent, N. W. Frazier, is an individual, trading as Federal Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Box 720, Tarboro, N. C..

Respondent, J. E. Woods, is an individual, trading as Paramount Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Route 1, Shelby, N. C.

Respondent, J. P. Kennington, is an individual, trading as Kennington Art Studio, 1301 McCallie Avenue, Chattanooga, Tenn. His address is Kershaw, S. C.

Respondent, S. C. Porter, is an individual, trading as Peerless Studio, 1301 McCallie Avenue, Chattanooga, Tenn. His address is Corpus Christi, Tex.

Respondent, R. H. Page, is an individual, trading as Page Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is 135 West Second Street, Washington, N. C.

Respondents, H. F. Wilson and Jack Howard, are individuals, and their addresses are Grenada, Miss., and Fair Mount, Ga., respectively. Said respondents are or were associated with one another trading as Wilson Portrait Co. and as Wilson Art Association, 1301 McCallie Avenue, Chattanooga, Tenn. Respondent, Jack Howard, also trades or has traded as Portrait Art Agency.

Respondent, T. F. Keegan, is an individual, trading as World Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Vero Beach, Fla.

Respondent, R. L. Gaddis, is an individual, trading as Artercraft Portrait Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Bartow, Fla.

Respondent, E. T. Greenwood, is an individual, trading as Vogue Art Studio, 1301 McCallie Avenue, Chattanooga, Tenn. His address is Paces, Va.

Respondent, Ted Bramley, is an individual, trading as Rembrandt Portrait Co., 1301 McCallie Avenue, Chattanooga, Tenn.

Respondent, S. P. Rogers, is an individual, trading as Rogers Art Co., 1301 McCallie Avenue, Chattanooga, Tenn. His address is Kanapolis, N. C.

The above-named respondents, to wit: W. S. Edwards, Ida Lillian Wilson Edwards, Jack E. Bramley, N. W. Frazier, J. E. Woods, J. P. Kennington, S. C. Porter, R. H. Page, H. F. Wilson, Jack Howard, T. F. Keegan, R. L. Gaddis, E. T. Greenwood, Ted Bramley, and S. P. Rogers are hereinafter on occasion referred to as "operators."

Respondents, Neal Allen, Lee Beaver, Tom Bell, H. P. Bingham, R. S. Bishop, James W. Boulware, Catherine Broward, N. B. Broward, Joseph Durrance, Edith Edmonson, Jack Edwards, Willis G. Edwards, Juanita Holland, R. F. Jones, A. S. King, F. H. McGaughey, H. D. McGaughey, Elizabeth Melvin, O. R. Melvin, Carl Newton, Grayce Nix, Letha Revels Putney, Jack Ritchie, Mary Schutz, G. C. Sours, R. C. Speece, Marshall Steadham, C. J. Wallentelsz, and O. A. Willocks, are individuals, some of whom are or were sales agents and employees of one or more of the respondent "operators" hereinbefore named and described. Said respondents are hereinafter referred to as "sales agents." Many of said individual respondents represent and have represented the address 1301 McCallie Avenue, Chattanooga, Tenn., to be the location of their place of business. Several of the individual respondents named in the complaint herein are unknown to the corporate respondent and "operators" and said corporate respondent and "operators" are without knowledge of the business connections of such individuals.

All of the respondents executing said stipulation and respondent, S. P. Rogers, are engaged in the sale and distribution of tinted or colored enlargements or tinted or colored miniatures of photographs and snapshots, and in the sale of frames therefor. Respondents cause and at all times mentioned herein have caused said products, when sold, to be transported from the State of Tennessee to the purchasers thereof located in various other States of the United States and in the District of Columbia.

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

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PAR. 2. Said corporate respondent is engaged in the business of producing, selling, and distributing among other things, colored or tinted enlargements and miniatures of photographs and snapshots and selling frames therefor, and in the sale and distribution thereof the officers and directors of said corporate respondent, in their individual and respective official capacities, dominate, direct and control the corporate policies, affairs and activities of said corporate respondent and exercise a substantial measure of direction and control over the organization, management, policies, operation and financing of the remaining respondents herein in carrying out the methods of competition and acts and practices herein described.

Cooperating with said corporate respondent in connection with the sale of its aforesaid products are the various individuals heretofore designated as "operators," who, through the medium of various and sundry trade names, sell and distribute corporate respondent's products in commerce to the consuming public.

The aforesaid "sales agents" are connected with the "operators" in varying capacities in connection with the sale and distribution of said corporate respondent's products.

PAR. 3. In the course and conduct of said business, respondents have been, and are now, engaged in direct and substantial competition with various corporations, partnerships and individuals also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements and tinted or colored miniatures of photographs and snapshots, and of frames therefor.

PAR. 4. The business of selling corporate respondent's said enlargements and miniatures of photographs and snapshots and frames therefor is and has been effected and accomplished by the following well-coordinated sales plan of procedure in which all of said respondents participate and cooperate.

Said corporate respondent, Success Portrait Co., under the direction, guidance, and control of its aforesaid officers and directors, operates and for several years last past has operated an art studio at the said address, 1301 McCallie Avenue, Chattanooga, Tenn. The said tinted or colored enlargements and miniatures sold by Success Portrait Co., and by said "operators" and "sales agents" are made here. At said studio are also kept and maintained stocks or frames for said enlargements and miniatures, also sold by corporate respondent and the "operators" and "sales agents."

In effecting the sale of corporate respondent's said enlargements and miniatures and frames therefor, the said "operators" employ numerous persons in various capacities such as "crew managers," "sales

agents," "road managers," "proof passers," "field artists," and "delivery men," to contact the purchasing public. Said employees, including "sales agents" are connected with and render services to the "operators" as a result of oral understandings or arrangements entered into covering the sale of the aforesaid enlargements and miniatures and frames therefor.

Equipment, including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases containing samples of corporate respondent's products, is furnished by corporate respondent to said "operators" and "sales agents" upon their order. The corporate respondent, in many instances, causes orders or contracts for its products to be entered on printed forms provided by it for that purpose. Some of these order blanks or contracts contain or have contained corporate respondent's name and address as well as the name or trade name of the "operator" through whom the order is secured. Many of the order blanks or contracts used by various "operators" contain and have contained only the trade name of the "operator" using the address of corporate respondent, Success Portrait Co., 1301 McCallie Avenue, Chattanooga, Tenn. In other order blanks or contracts used by said "operators" it is or has been variously stated that said "operator" is "affiliated with" or is a "subsidiary of" said corporate respondent, but not all of said "operators" have used the terms "affiliated with" or "subsidiary of."

When an order is obtained, said order blank or contract is signed by the "operator" or "sales agent" obtaining the order as "representative" or "company representative" on a line provided therefor.

Among and typical of the form of order blank or contract used by the "operators" in connection with the trade names mentioned herein and various other trade names to the Commission unknown, other than and excluding the wording "subsidiary of Success Portrait Company" as stated hereinabove, is the following:

* * * * *

SUPERIOR ART STUDIOS

Home Office, 1301 McCallie Ave
CHATTANOOGA, TENN.

Sketching and Portrait Painting

THIS CERTIFICATE entitles the holder to one HAND-PAINTED STREAM-LINE PORTRAIT size 9×14, for the producing cost of \$2.98 *unframed*.

To introduce this grade of art, we are placing only a limited number under this offer. You will be notified by mail when proof of your portrait is ready. It will then be shown at your residence when the \$2.98 *must be paid*.

In consideration of the reduced price at which this portrait is placed, it is expressly agreed that it shall be properly protected and exhibited.

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- Verbal agreements other than herein stated, will not be recognized.
- We guarantee the return of your photograph with the finished work.

**COUNTERMANDS NOT RECOGNIZED
PAY THE MAN WHO SHOWS THE PROOF**

Date _____ Representative _____

In furtherance of the conduct of the business arrangements between corporate respondent and said "operators," corporate respondent furnishes "operators" and "sales agents" if desired, with identification and credential certificates addressed to and to be shown to the general public, recommending them to the public, and designating each as "a customer of ours handling portraits, miniatures, art paintings and frames," and certifying to his honesty and dependability. On occasion, also, corporate respondent furnishes letters of similar import to "operators" the same also to be exhibited to prospective customers.

Corporate respondent is at all times in possession of the names and addresses of customers whose pictures it is making. Corporate respondent keeps on hand, for the use of "operators" and "sales agents," copies of order books and of envelopes used for mailing prints obtained from the public in cases where said "operators" or "sales agents" use and are permitted to use corporate respondent's catalog in selling to the public. Corporate respondent, upon request, furnishes its sales catalogs and sales outfits to prospective selling agents, charge being made for sample cases.

Mail from customers of the "operators" and "sales agents" is addressed to many of them at 1301 McCallie Avenue, Chattanooga, Tenn., and in some instances is there opened by someone connected with corporate respondent, Success Portrait Co., when so requested by the "operators" or "sales agents." If the contents of a letter are not understood the letter is forwarded out to the field to the particular "operator" or "sales agents" involved, for verification and further attention.

Officials of corporate respondent, from time to time, pay or have paid visits to various "operator" organizations instructing them regarding sales technique and methods and as to how business may be obtained and improved. Daily reports from salesmen in the field have been required by corporate respondent, covering the canvass of customers, on proof passing and the delivery of products sold. Corporate respondent, on occasion, writes or offers to write types of sales talks deemed appropriate for use by "sales agents" or "operators." Corporate respondent, upon occasion, confers and has conferred with "operators" regarding the use of trade names to be employed by them.

and with respect to contract forms to be used. Officials of corporate respondent, have endorsed over to Success Portrait Co., for deposit to its credit at Hamilton National Bank, post office money orders payable to various trade name companies sent in by "operators." Open accounts covering the operation of "operators" in the field are kept at the office of corporate respondent and from time to time advances are made to those "operators" who submit orders and remit collections deemed sufficient to justify such office credit operations. Other "operators" or "sales agents" are dealt with on a strict c. o. d. basis. Officials of corporate respondent, maintain and have maintained close supervision over the business affairs and practices of respondent "operators" and "sales agents" and on occasion have urged the discharge of "sales agents."

All of the aforesaid "operators" in selling to and dealing with the consuming public, and in pursuance of an agreement theretofore entered into between them and said corporate respondent, are permitted to use and do use corporate respondent's Chattanooga address, 1301 McCallie Avenue, as and for the address of each trade name and company under which they respectively operate.

PAR. 5. The Commission finds that the so-called or designated Old Master Portrait Co., Superior Art Studios, Colonial Art Institute, Old English Art Co., Streamline Art Co., Federal Art Co., Paramount Art Co., Kennington Art Studio, Peerless Studio, Page Art Co., Wilson Portrait Co., Wilson Art Association, Portrait Art Agency, World Art Co., Artercraft Portrait Co., Vogue Art Studio and Rembrandt Portrait Co., each employing and using the address of 1301 McCallie Avenue, Chattanooga, Tenn., as and for its actual business location and address, are merely trade names assumed and used by said "operators" to promote the sale by them of products actually produced by corporate respondent Success Portrait Co.

The Commission further finds in this relation that no "operator" or "sales agent" herein mentioned, except in the case of one or two of them, has owned, operated, or conducted, directly or indirectly, any "art studio," "institute of art," or place of business at Chattanooga, Tenn., or elsewhere in which tinted or colored enlargements or miniatures of photographs or snapshots are or were made, and no such "operator" or "sales agent" owns, operates, or controls the photograph equipment and paraphernalia essential in producing such enlargements or miniatures. No such "operator" or "sales agent" has had in his employ or under his control or direction, artists, operators, or persons skilled in such photographic technique or in the use of the air brush, paint brush, or skilled in drawing or pastel work. No such "operator" or "sales agent" has in fact maintained an office or

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an office force at the address, 1301 McCallie Avenue, Chattanooga, Tenn., with the exception of respondent, W. S. Edwards, who employs a secretary and conducts correspondence from that address. The respective trade names used and employed by said "operators" and "sales agent" do not actually designate a particular existing business, that is, a place at which a business operation is actually located and conducted. The business operations conducted at said Chattanooga address, 1301 McCallie Avenue, are and have been actually conducted only by corporate respondent, Success Portrait Co.

The Commission finds that no "operator" employing the terms or legends "Subsidiary of Success Portrait Co.," or "Affiliated With Success Portrait Co.," is now or ever has been a business subsidiary or affiliate of said corporate respondent as said terms imply and are understood to mean in the field of business or commerce. The said terms, "subsidiary of" and "affiliated with" as used in connection with the name "Success Portrait Co." have been employed by "operators" to induce customers to believe that they are doing business with an operating established house, and serve to refer the customers to Success Portrait Co. for a financial rating of the trade name company and the "operator" using it.

The Commission finds that as a result of the use of said "operator" of the aforesaid trade names, as herein described, purchasers and prospective purchasers are led to believe that they are and were contracting or dealing with duly constituted representatives or sales agents of actually existing and operating art studios or associations, or art institutes whose names appear on the various contract forms, order blanks or identification certificates employed by said "operators" and "sales agents." As a result of such belief so engendered, purchasers and prospective purchasers confuse the character of the business actually conducted by said "operators" and have confused the business of "operators" with various organizations similar in name and designation which are actually conducting, or which may properly be designated as art associations, art studios or art institutes.

The Commission finds that as a further result of the foregoing business arrangements and practices employed by "operators" and "sales agents," liability to purchasers is evaded for their statements, representations, acts, practices, and sales methods in the sale of corporate respondent's products, and that business rating, credit, prestige, and standing to which they are not entitled are and have been given to said various trade names which employ the same business address as that of corporate respondent, Success Portrait Co., particularly to trade name companies representing that they are subsidiaries of or affiliated with corporate respondent, Success Portrait Co.

PAR. 6. In connection with the sale of corporate respondent's said colored photographic enlargements and miniatures by said "operators" employing corporate respondent's business address at 1301 McCallie Avenue, Chattanooga, Tenn., as aforesaid, various "sales agents" working under the immediate direction of and in cooperation with said "operators" visit the homes of customers and prospective customers located in the cities, towns, and rural communities of various States of the United States other than the State of Tennessee. Each "sales agent" carries with him, for use in soliciting orders, samples of the work that is represented as typical of that done by the trade name company he happens to represent. Said samples are attractively displayed. They have been reproduced and built up from carefully selected photographic subjects of highest photographic value. Colored enlargements and miniatures of such selected photographs are skillfully done with great care and detail. Many of them closely resemble paintings done by hand. These attractive specimens in colored enlargements or miniatures are exhibited by "sales agents" upon entering the home of a customer. The company represented by the "sales agent," it is stated, is prepared to duplicate or reproduce such type of work. If a customer is interested, the customer is induced to permit the "sales agent" to inspect photographs or snapshots of some member of the family, dead or living. Finally, the "sales agent" selects a photograph or snapshot pronounced suitable or satisfactory for reproduction purposes. The photograph or snapshot so selected is represented as a model or guide to the studio's or art institute's artist, who, it is represented, will "paint" a portrait of the same or make a "painting" or "hand-painted portrait" or "hand-painted streamlined portrait." The picture or snapshot is to be returned with the completed work, it is further represented. Reference is made by the "sales agent" from time to time to the "portrait painting" as being made by the particular trade name company said "sales agent" stated that he represents the same in each instance being a trade name using the Chattanooga address of corporate respondent, Success Portrait Co. It is further represented from time to time by "sales agents" selling corporate respondent's said products, that an "oil painting" will be made, to be finished in oil by hand on linen, silk or "Japanese silk."

The Commission finds that the attractive samples or specimens exhibited to the customer by "sales agents" are made by corporate respondent, Success Portrait Co., and not by any trade name company using its Chattanooga address for selling purposes. In various instances, due to the fact that "operators" and "sales agents," in obtaining business, select from customers and approve as suitable for the making

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of colored enlargements or miniatures, photographs or snapshots which are inferior in various essentials from a photographic standpoint, and fundamentally incapable of actually producing good enlargements, customers find and have complained that the "paintings" or "pictures" made for them are inferior to the samples exhibited and used by the "sales agents" in obtaining the orders for the said "paintings" or colored enlargements. Due to the fact that the respondent, Success Portrait Co., is furnished, in some instances, with such photographs or snapshots of inferior quality from which to make its finished product, said corporate respondent on occasion, is unable to produce from such photographs or snapshots finished products equal in appearance to the samples which had been displayed to purchasers.

PAR. 7. The Commission further finds that a drawing is a representation produced by the art of drawing, a work of art produced by pen, pencil, or crayon. A crayon drawing is the act or art of drawing with crayons. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

The Commission finds that a painting is understood by artists who paint pictures, photographers who color photographs, and the general public, as an original representation by the painter of a design, image, or object on a surface by means of paints, water color, or oil; a free-hand image painted directly on the surface without the intervention of any mechanical means, such as a camera. This is the conception which the general public has of the term "painting." A water color is a painting with pigments for which water, and not oil, is used as a solvent. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other materials, without the aid of photography.

The Commission finds in this connection that the so-called "paintings," "hand-painted portraits," and "hand-painted" miniatures produced, sold, and distributed by respondents are not paintings. They are not oil paintings, and are not finished in oil by hand on linen or on silk or on Japanese silk. Said pictures do not conform to the established belief of the public as to what constitutes a painting, nor do said pictures constitute paintings as understood by artists who paint pictures, or photographers who color photographs. Said pictures sold and distributed by respondents are in fact colored photographs, miniatures, or enlargements, produced by making a photographic negative of the photograph furnished by the customer. Through the use of special photographic equipment an enlargement, or a reduction in the case of the miniature, is then made from the negative on spe-

cially prepared paper which will take dry color or absorb liquid color. Said enlargements or miniatures are then colored by the use of pastel or crayon, water color or other powdered pigments soluble in water, sprayed upon the photographic reproduction in solution through the use of a mechanical air brush operated by compressed air, a portion of the colors being supplied by hand through the use of a camel hair brush. While corporate respondent does have in its employ artists who are capable of producing genuine oil paintings as such works of art are known, and while corporate respondent's studio can fill an order for a genuine oil painting, corporate respondent does not now and has not used oil paint in the finishing or coloring of the said enlarged photographs and the said miniatures sold as hereinabove described.

PAR. 8. Respondent "sales agents," in further connection with sales talks made by them in selling the products produced by corporate respondent, have represented at times in such relation that an art studio, an art institute, or academy of art is being maintained in which art classes are held for the purpose of giving experience to young artists and that "sales agents" desire to obtain various photographs from which hand-painted portraits and hand-painted miniatures are to be painted, and further, that if the prospective purchaser will lend to the "sales agent" a photograph or snapshot, it will be copied by hand in oil colors by an art student attending such classes.

In many instances, in connection with the sale of said enlargements or miniatures, "sales agents" represent to customers that the sale is an "introductory offer" only, that only a limited number of "paintings" are to be placed in any given town or locality, that the customer will pay only for the work done by the artist, the picture to cost nothing; that the "painting" or portrait is being offered at a "reduced price," and that in consideration of such fact it is expressly agreed that it is to be "protected and exhibited." In other instances the price named is designated as an "advertising price" or it is represented that the picture is being offered merely at the "cost of production."

The Commission finds that said "operators" do not maintain or operate any art studios or academies of art, and that no art classes are conducted at any time for the purpose of giving experience to young artists or otherwise. The Commission finds further that corporate respondent's said colored enlargements and miniatures are not sold by said "sales agents" at a "reduced price" or at any "advertising price," or "special introductory price" or for the "cost of production" or to a selected few in any given place or locality but that on the contrary the prices at which said products are offered and sold are the

usual and customary prices asked of the consuming public by said respondent "operators" and "sales agents."

PAR. 9. During the 5 years last past some of said "operators" and "sales agents," in some instances, have further represented to customers and prospective customers that a drawing contest would be held in a certain community for the purpose of deciding who should be one of the few "lucky persons" to have "paintings" placed on exhibition in their homes in connection with a "special advertising offer" or "special introductory offer." In connection with said drawings, "sales agents" produce a number of sealed envelopes containing various slips of paper. It is represented that most of said slips are blank and of no value but that a few are certificates or coupons which will entitle the holder thereof to two genuine hand-painted portraits finished in oil for the sum of \$10.00 or one such painting for \$7.50 (at various times similar offers are made at different prices, such as the "lucky" drawer getting a picture for half price or two for the price of one). The said envelope containing said slips are manipulated by "sales agents" so that all acceptable prospective customers invariably draw a "lucky" coupon or certificate, of which the following is typical:

SUPERIOR ART STUDIO
1301 McCallie Avenue,
Chattanooga, Tennessee.

For the purpose of advertising the SPECIALLY DESIGNED STREAMLINE PORTRAITS in full colors and extending our business.

The Original Holder of This

RED SEAL CERTIFICATE

is entitled to receive and take advantage of Our Special Introductory Offer. Acceptable Photographs must be furnished our representative.

This certificate is non-negotiable and redeemable only as stipulated above.

Right is reserved to withdraw certificate if Photographs are not suitable for Portraits.

Issued to -----

SUPERIOR ART STUDIO

Various other types of certificates not specifically set out herein are used by numerous "operators" and "sales agents" in carrying out said so-called drawing contest scheme.

The Commission finds that said alleged drawing contest is a deceptive scheme conceived for the sole purpose and with the result of inducing prospective purchasers to believe that if they draw "lucky" numbers they will have the advantage of obtaining pictures at prices greatly below prices other customers must and do pay for them. By means of this "drawing contest" scheme members of the purchasing public are beguiled into believing that they are the exceptional few

whom fortune has favored. As a result of the statements and representations of respondent "operators" and "sales agents" in relation to said "drawing contest" the holders of said "red seal certificates" or other so-called "lucky" coupons are led to believe that said coupons or certificates place holders thereof at a distinct financial advantage in purchasing a "painting" or "portrait," and such holders are thereby induced to enter into contracts for the purchase of a so-called "painting" or "portrait." In truth and in fact said coupon or certificate gives the holder thereof no advantage in price whatsoever, or otherwise, for practically all prospective purchasers sold through the "draw" are permitted to secure a "lucky" certificate or coupon and all persons considered acceptable customers may purchase said "paintings" or "portraits" at the price used by respondents in connection with the said "draw" or "special introductory offer."

PAR. 10. In various instances "operators" and "sales agents" engaged in the sale of said colored enlargements and miniatures as produced by corporate respondent make no reference to or mention of a frame at the first or original contact with a customer. The information that it will be necessary to later place the picture in a frame in order to preserve it, that the picture will be of an unusual shape and design, and that later on another "sales agent" will call for the purpose of selling a frame for the picture, is not, in various instances, given to the customer by the first or contact "sales agent."

A second "sales agent" designated as "field artist" or "instructing artist" later appears with an uncolored rough proof or "sketch" of the enlarged photograph. This "sales agent" collects for the cost of the colored enlargement, usually the sum of \$2.98, and endeavors to sell the customer a frame for the picture. In numerous instances the matter of the frame is here mentioned for the first time. The frame not being mentioned by the first "sales agent" various customers have assumed at the outset that the frame would be included in the price quoted by the said first "sales agent." If the customer objects to, or refuses to purchase a frame on account of the matter of price, quality, or design, the customer then on various occasions is informed by the "sales agent" for the first time that a frame for the picture cannot be purchased from any source other than through his company; that the company he represents manufactures the only frame that will fit the picture; that the portrait will not hold its color or be of any value unless it is framed. From time to time the attention of the customer is called to the customer's agreement to "protect" and "exhibit" the portrait and to the "obligation" of the customer under the contract to buy a frame. In the event the customer refuses to buy a frame from the second agent or "field artist" or "instructing

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artist" and elects to have the picture finished for the sum agreed upon and paid, the matter of the purchase of a frame is further deferred until the delivery of the finished colored enlargement by a third "sales agent." The person making delivery of the finished or colored enlargement in many instances, presents the same to purchaser in a frame, whereupon the above-described reasons why a frame must be bought from "sales agents" will be stated, or may be repeated, as the case may be. In the event the customer finally refuses to buy a frame, respondent "sales agents" in some instances refuse to deliver the completed picture, regardless of whether or not it has been paid for in full, and refuse to return the original photograph loaned by the customer, until the frame is ordered.

The Commission finds that the "sales agent" represented to be a "field artist" or "instructing artist" is not an artist in the sense that such term is ordinarily understood by the consuming public; that actually, said so-called "field artist" or "instructing artist" is a delivery man or frame salesman operating for and on behalf of respondents. The Commission finds that purchasers are not advised, and that there is no such understanding or agreement in connection with said contracts, that photographs or snapshots loaned or submitted by purchasers are to be retained by respondents until a frame is purchased or payment is made of any sum alleged by respondents to be due them. On the contrary, purchasers are advised originally by "sales agents" that photographs loaned to them will be returned at the time the finished product is submitted. The Commission finds that, in many instances, "operators" and "sales agents" conceal and have concealed from purchasers at the time the "portrait" is ordered the fact that the finished product will be octagonal in shape and will be delivered in a frame of peculiar octagonal, convex form and shape; and that it will be impossible for the customer thereafter to obtain a frame to fit said portrait except from or through respondents at prices fixed by them.

The Commission finds that in the course and conduct of their business, the efforts of respondents are and have been directed largely to the sale of frames. The Commission finds, that the sales plan employed by said respondent "operators" and "sales agents," which is characterized by the sale of a picture only by the first or original contact salesman and the subsequent sale or attempted sale of a frame by a second and different party known as "field artist" or "instructing artist" who, calls later, is operated primarily and actually for the purpose of, and has the effect of, misleading and forcing the customer into buying something he did not originally intend buying, namely, a frame; that as a result the purchaser of a picture is forced to deal with respondents in connection with the purchase of frames. This method of dealing

in frames, the Commission finds, places in the hands of "operators" and "sales agents" a means whereby, in some instances, they may represent and have represented, as the customary or regular prices or values for frames, prices and values which are in fact substantially in excess of the prices at which frames of similar type and quality are usually and customarily sold in the normal and usual course of business.

PAR. 11. The Commission finds that the aforesaid statements, representations, acts, practices, and methods used by various of the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive, but are illustrative of the character and type of statements, representations, acts, practices and methods used by respondents in carrying out the well coordinated sales plan in which they have participated and cooperated to induce the purchase of their said products.

PAR. 12. The Commission finds that the use by respondents of the hereinbefore enumerated acts, practices, and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, has had, and now has, the capacity to, and does, mislead and deceive the purchasing public concerning the quality and value of the products sold, the nature, and character of the business conducted by respondents, including the financial standing and responsibility of said "operators" and "sales agents," the origin and identity of the products being sold and as to the sales proposal to be submitted later involving the sale of a frame of peculiar shape and design, and that the use of such acts, and practices and methods further has led, and does lead, purchasers erroneously and mistakenly to believe that the said representations and implications so made and used by respondents are true, and causes and has caused a substantial number of the purchasing public to purchase substantial quantities of respondent's said products.

PAR. 13. The following persons named as parties respondent in the amended complaint issued by the Commission in this matter on March 31, 1942, were not served respectively with a copy of said complaint nor have they entered appearance in the proceeding by counsel or otherwise:

C. A. Hicks, individually and trading as H. B. Art Co.; Ruth Attix, Henry Acie Barrentine, Earl Bigby, Lloyd Brown, H. V. Caton, L. Clark, O. D. Clayton, Robert Dodd, George F. Donehue, J. F. Evans, Thos. Gaddis, V. Gantt, Jimmy Greenwood, L. H. Marsden, Thelmar Marshall, J. H. McCoy, J. W. Parker, T. E. Savage, Lillian Shepard, John G. Tierney, Stella Timmerman, Kay Harriet Whitten, and Chester Wofford.

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CONCLUSION

The aforesaid acts and practices of respondents as herein described, effected, and accomplished through the medium of a well-coordinated sales plan of procedure in which said respondents have participated and cooperated, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade 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, Success Portrait Co., a corporation and trading as Chattanooga Art Medallion Co. and as Art Trade Studios; James Morton McConnell, individually and as president and a director of corporate respondent; Ozro Absolem Brammer, individually and as vice president and a director of corporate respondent; George Nathan McConnell, individually and as secretary and a director of corporate respondent; Jesse Roy Hodge, individually and as treasurer and a director of corporate respondent; W. S. Edwards and Ida Lillian Wilson Edwards, individually and trading as Old Master Portrait Co. and formerly trading as Colonial Art Institute, as Superior Art Studios, and as Old English Art Co.; Jack E. Bramley and Grayce Nix, individually and trading as Streamline Art Co.; N. W. Frazier, individually and trading as Federal Art Co.; J. E. Woods, individually and trading as Paramount Art Co.; J. P. Kennington, individually and trading as Kennington Art Studio; S. C. Porter, individually and trading as Peerless Studio; R. H. Page, individually and trading as Page Art Co.; H. F. Wilson, individually and trading as Wilson Portrait Co. and Wilson Art Association; Jack Howard, individually and trading as Wilson Portrait Co., Wilson Art Association, and as Portrait Art Agency; T. F. Keegan, individually and trading as World Art Co.; R. L. Gaddis, individually and trading as Artcraft Portrait Co.; E. T. Greenwood, individually and trading as Vogue Art Studio; Ted Bramley, individually and trading as Rembrandt Portrait Co.; S. P. Rogers, individually and trading as Rogers Art Co., and Neal Allen, Lee Beaver, Tom Bell, H. P. Bingham, R. S. Bishop, James W. Boulware, Catherine Broward, N. B. Broward, Joseph Durrance, Edith Edmonson, Jack Edwards, Willis G. Edwards, Juanita Holland, R. F. Jones, A. S. King, F. H. McGaughey, H. D. McGaughey, Elizabeth Melvin, O. R. Melvin, Carl Newton, Letha Revels Putney, Jack Ritchie, Mary Schutz, G. C. Sours, R. C. Speece, Marshall Steadham, C. J. Wallentelsz, and O. A. Willocks; upon a stipulation as to the facts entered into between the above-mentioned respondents, with exception

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of S. P. Rogers, and Richard P. Whiteley, Assistant Chief Counsel for the Commission, providing that without further evidence or other intervening procedure, the Commission might issue and serve upon said respondents therein named findings as to the facts and conclusion based thereon, and an order disposing of the proceeding; and upon the substitute answer filed in this proceeding by respondent, S. P. Rogers, in lieu of the answer theretofore submitted by him, 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, 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, Success Portrait Co., a corporation and trading as Chattanooga Art Medallion Co. and as Art Trade Studios, or doing business under any other trade name or style; James Morton McConnell, individually and as president and a director of Success Portrait Co.; Ozro Absolem Brammer, individually and as vice president and a director of Success Portrait Co.; George Nathan McConnell, individually and as secretary and a director of Success Portrait Co., and Jesse Roy Hodge, individually and as treasurer and a director of Success Portrait Co.; W. S. Edwards and Ida Lillian Wilson Edwards, individually and trading as Old Master Portrait Co. and formerly as Colonial Art Institute and as Superior Art Studios and as Old English Art Co.; Jack E. Bramley, individually and trading as Streamline Art Co.; N. W. Frazier, individually and trading as Federal Art Co.; J. E. Woods, individually and trading as Paramount Art Co.; J. P. Kennington, individually and trading as Kennington Art Studio; S. C. Porter, individually and trading as Peerless Studio; R. H. Page, individually and trading as Page Art Co.; H. F. Wilson, individually and trading as Wilson Portrait Co. and Wilson Art Association; Jack Howard, individually and trading as Wilson Portrait Co., Wilson Art Association and as Portrait Art Agency; T. F. Keegan, individually and trading as World Art Co.; R. L. Gaddis, individually and trading as Artercraft Portrait Co.; E. T. Greenwood, individually and trading as Vogue Art Studios; Ted Bramley, individually and trading as Rembrandt Portrait Co., and S. P. Rogers, individually and trading as Rogers Art Co., or trading under any other name or names, and Neal Allen, Lee Beaver, Tom Bell, H. P. Bingham, R. S. Bishop, James W. Boulware, Catherine Broward, N. B. Broward, Joseph Durrance, Edith Edmonson, Jack Edwards, Willis G. Edwards, Juanita Holland, R. F. Jones, A. S. King, F. H. McGaughey, H. D. McGaughey, Elizabeth Melvin, O. R. Melvin, Grayce Nix, Carl Newton, Letha Revels

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Putney, Jack Ritchie, Mary Schutz, G. C. Sours, R. C. Speece, Marshall Steadham, C. J. Wallentelsz, and O. A. Willocks, their respective representatives, salesmen, and employees, directly or through any corporate or other device in connection with the offering for sale and sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of tinted or colored photographic enlargements or miniatures of photographs and snapshots and of frames therefor, do forthwith cease and desist from:

1. Representing directly or in any manner, that colored or tinted photographs or colored or tinted photographic enlargements or reduction are hand-painted or are paintings.

2. Using the terms "oil painting," "portrait painting," "hand painted," or "hand painted portrait," or the word "painting" either alone or in conjunction with any other words or terms in any way to designate, describe, or refer to colored or tinted pictures, photograph, photographic enlargements or reductions, or other pictures produced from a photographic base or impression.

3. Representing that pictures being sold in the regular course of business at the usual and customary prices therefor are being or will be sold only to a limited number of customers, or as an "introductory offer," or at an "advertising price," or at a "reduced price," or representing in any manner that a purchaser is receiving an advantage in price or other consideration not ordinarily available.

4. Representing that any specified sum in excess of the actual cost of production is merely the "cost of production."

5. Representing that the picture to be made and delivered will be a reproduction or duplication of the sample displayed to the customer unless in fact the picture thereafter delivered is of the same quality, design, and workmanship as said sample.

6. Using the trade names "Art Studios," "Art Institute," "Art Company," "Art Association," or any other fictitious name of similar import unless the respondent so using such name or names actually owns, operates, conducts, or controls an organization or establishment of the character indicated and comprehended by the trade name so used.

7. Misrepresenting, or authorizing, permitting, or cooperating in the misrepresentation of, the financial responsibility, prestige, or standing of the respondents or the character and extent of their business by falsely claiming to be a subsidiary or business affiliate of an operating, established house, or by deceptively using the business address of such established house as and for a business allegedly operated by them, and from misrepresenting through the use of fictitious trade names and misleading street and post office addresses

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the place, character, and extent of the business actually conducted by them.

8. Representing that respondents maintain art studios, art institutes, or art academies in which art classes are held for the purpose of giving experience to young artists and that such students will paint by hand, portraits and miniatures from photographs furnished to sales agents by customers.

9. Using a "draw," "draw contest," or so-called "lucky" blanks, number slips, coupons, or certificates, or any other device, plan, or scheme, or any prize contest or special introductory or advertising offer, so as to represent, indicate or imply that any customer will obtain a financial advantage thereby or be entitled to receive any picture free or to receive a substantial discount or reduction in the price of any picture or pictures.

10. Using the terms "field artist" or "instructing artist" or similar terms to designate, describe or refer to operators or salesmen delivering pictures or "sketches" of pictures or selling frames.

11. Concealing from or failing to disclose to customers at the time pictures are ordered that the finished picture when delivered will be so shaped and designed that it can only be used in a specially designed, odd-style frame which can be procured only from respondents.

12. Failing or refusing, in cases where a picture ordered has been completed and paid for, to return to the customer the completed picture or the photograph or snapshot previously loaned by the customer for use in producing the picture.

13. Representing as the customary or regular prices or values for frames, prices and values which are in fact greatly in excess of the prices at which said frames are customarily offered for sale and sold in the normal and usual course of business.

It is further ordered, That this proceeding, insofar as it relates to C. A. Hicks, individually and trading as H. B. Art Co., Ruth Attix, Henry Acie Barrentine, Earl Bigby, Lloyd Brown, H. V. Caton, L. Clark, O. D. Clayton, Robert Dodd, George F. Donehue, J. F. Evans, Thos. Gaddis, V. Gantt, Jimmy Greenwood, L. H. Marsden, Thelmar Marshall, J. H. McCoy, J. W. Parker, T. E. Savage, Lillian Shepard, John G. Tierney, Stella Timmerman, Kay Harriet Whitten, and Chester Wofford be, and the same hereby is, closed without prejudice, the Commission being unable to effect service of complaint upon said respondents.

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

Syllabus

IN THE MATTER OF

EMPIRE MERCHANDISE CORPORATION AND SOPHIE
RUBMAN

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

Docket 3357. Complaint, Mar. 14, 1938—Decision, Aug. 4, 1942

Where a corporation and its president, who owned virtually all of its stock and controlled its policies and practices, engaged in the competitive interstate sale and distribution of novelty merchandise such as flashlights, jewelry, watches, chinaware, and silverware—

(a) Distributed through the mails to prospective sales representatives throughout the United States advertising circulars which depicted and described certain articles offered as compensation for the sale of merchandise, also depicted, and which contained also a pull card for use in sale of articles listed and priced, under a scheme in accordance with which the particular article to be received, and the price to be paid, were disclosed after removal from the card of the tab selected by the customer, and the operator was compensated, at his option, by cash or merchandise premium; and

Thereby supplied and placed the means of conducting lotteries in the hands of such operators who, notwithstanding notice purportedly offering customer the right to buy any article involved at price shown on back of slip, made use of their said pull-card device in selling their merchandise in accordance with aforesaid plan; contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who, 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 method and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that offered and sold by competitors who do not use such methods, thereby diverting trade unfairly from said competitors to them; and

(b) Represented that the articles offered to their sales representatives were free and without cost to them through use on their circulars of such statements as "Free gifts for all" and "Wonderful gifts for all";

When in fact none of the articles thus designated were given away free, but all were supplied to their representatives only for services rendered in sale of merchandise in question, and price thereof was included in that of the other articles which the representative was required to sell;

With effect of misleading and deceiving a substantial number of persons into the mistaken belief that such articles of merchandise were given to representatives free, thereby causing them to undertake the sale of said products in preference to those of competitors; whereby trade was diverted from their 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.

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As respects the insistence of those charged with the operation of a lottery scheme in connection with the sale of their merchandise through persons whom they supplied with pull-card devices for use in selling by chance to members of the public, goods, the prices and values of some of which were in excess of those shown therefor on such cards, that the lottery or chance element was removed from the scheme by a notice purportedly offering any customer the right to buy any article at price shown for it on the back of its slip: such notice was inconsistent with the sale of the various articles called for under the plan by the operator, who, after sale of all chances, was to remit to sellers and receive from them said goods for distribution to various purchasers as shown on card and who was compensated, at his option, by deduction of cash premium or receipt of merchandise premium along with aforesaid other goods; was inconsistent with the instructions to the operator which made no provision for any such contingency; was inconsistent with the effective working of the plan, and was, it appeared, taken advantage of only in exceptional and isolated cases; and, as a practical matter, had no substantial effect upon the operation of the plan and did not serve to remove the lottery element from seller's sales method.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel and *Mr. J. W. Brookfield, Jr.* for the Commission-
Nash & Donnelly, of Washington, D. C., for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondent, Empire Merchandise Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 414 Broadway, New York, N. Y. Respondent, Sophie Rubman, is the president and a director of, and the principal stockholder in, the respondent, Empire Merchandise Corporation, and formulates, controls and directs its policies and practices. Respondent, Sophie Rubman, has her offices at the same address as that of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been,

engaged in the sale and distribution of razor blades, flashlights, jewelry, watches, china and silverware, clocks, cosmetics, cigaret lighters and cases, bedding, kitchenware, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products when sold to be shipped or transported from their place of business in the State of New York to purchasers thereof in the State of New York and in 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 in commerce by said respondents in such merchandise between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of 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. Respondents insert advertisements in magazines of interstate circulation and distribute, or cause to be distributed, to representatives and prospective representatives certain advertising literature, including a sales circular. Respondents' merchandise is distributed to the 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 the 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 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 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, in-

duces 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 of greater value than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, the said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull cards in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute various assortments of said merchandise and furnish 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 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 the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in commerce 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.

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Many persons are attracted by respondents' said method and by the element of chance involved in the sale of said products 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 have caused various false, deceptive and misleading statements and representations to appear in their advertising matter as aforesaid, of which the following are examples, but are not all-inclusive:

Free gifts for all
 Free Ladies' 4 Jewel Wristwatch
 Free 8 piece bed set
 All charges prepaid by us

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondents in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe (1) that respondents give away certain of their said articles of merchandise without cost to their said representatives, and (2) that respondents prepay all charges on all of their said articles of merchandise.

PAR. 6. In truth and in fact, none of respondents' premiums or so-called gifts are given away "free" or without cost, but said premiums or so-called gifts, which are represented as being "free" to said representatives, are either purchased with labor by them or the price of said premiums or so-called gifts is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called gifts can be procured by them. For a number of premiums or so-called gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondents do not prepay all of the 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 the result of such erroneous belief. There are, among the competitors of respondents as mentioned in paragraph 1 hereof, manufacturers and distributors of like or similar products who do not make such false, deceptive and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to 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 methods, acts and practices of respondents are all to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an act of Congress 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 14, 1938, issued and subsequently served its complaint in this proceeding upon the respondents, Empire Merchandise Corporation, a corporation, and Sophie Rubman, individually and as an officer of Empire Merchandise Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorneys for the respondents, before 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 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);

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and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the fact and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Empire Merchandise Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 414 Broadway, New York, N. Y.

Respondent, Sophie Rubman, an individual, is president of the corporate respondent. She is the owner of virtually all of the capital stock of the corporation and formulates, directs, and controls all of the policies, acts, and practices of the corporation.

PAR. 2. Respondents are now, and since 1932 have been, engaged in the sale and distribution of merchandise generally designated as novelty merchandise and including such articles as flashlights, jewelry, watches, chinaware, silverware, clocks, cosmetics, cigarette lighters, bedding, and kitchenware. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. 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 respondents are, and have been, in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 4. In promoting the sale of their products respondents distribute advertising or sales circulars through the United States mails to prospective sales representatives located at various points throughout the United States. The circulars contain pictorial representations and descriptive matter with respect to certain articles of merchandise offered by respondents as compensation for the sale of their merchandise, and also pictorial representations and descriptive matter as to certain of the articles of merchandise which respondents offer for sale.

Each of these circulars also contains what is commonly known as a pull-card device. This pull-card device consists of a number of

tabs, under each of which is concealed the name of one of the articles of merchandise offered for sale by respondents and the price thereof. Neither the name of the article nor the price thereof is disclosed to the purchaser or prospective purchaser until after the tab has been separated or removed from the card. Adjacent to the pull tabs is a list of all of the articles of merchandise offered for sale and the price thereof, which corresponds to the articles and prices concealed under the various pull tabs. When a purchaser has detached a tab and there is thus disclosed which article he is to receive and the price to be paid for it, his name is written on the list opposite the particular article of merchandise.

Some of the articles of merchandise offered for sale have retail values greater than the prices so designated for them, but all of the articles are distributed to the purchasers at the prices on the tabs. The fact that some of such articles of merchandise have values in excess of the designated prices induces members of the purchasing or consuming public to pull the tabs in the hope that they will obtain such articles. Moreover, some of the articles offered for sale are represented through pictures and reading matter in the matter in the circular as having values greater than their actual value, which serves as a further inducement to prospective purchasers to pull the tabs in an effort to obtain such articles. The specific article which the purchaser receives, the amount of money he is required to pay for such article, and the question whether the purchaser will receive an article having an actual or apparent value greater than the price designated therefor are thus determined wholly by lot or chance.

When the individual operating the pull card has succeeded in selling all of the articles of merchandise listed under the tabs and has collected the respective amounts charged therefor, the total of such amounts is remitted to respondents. Upon receipt of such total amount, respondents ship to their representative the merchandise sold, together with a premium for the representative as compensation for operating the device and selling and distributing the merchandise, such premium having been selected by the representative from articles pictured in the circular. If the representative so desires, he may deduct a cash premium in lieu of the merchandise premium. Upon receipt of the merchandise from respondents, the representative delivers the various articles to the purchasers in accordance with the list prepared when the tabs were pulled.

PAR. 5. In connection with the pull-tab device the following reading matter appears:

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

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pay the holder of this book the price shown on slip. If you do not want the article, you need not buy it.

Respondents insist that the insertion of this notice has the effect of removing the lottery or chance element from their sales method. The Commission finds, however, that despite this notice, the articles of merchandise are in fact sold and distributed by means of the pull-card device in accordance with the sales plan or method hereinbefore described. The successful operation of respondents' sales plan is dependent upon the ability of the operator to sell all of the articles listed, so as to permit remittance of the required amount to respondents in order to obtain the merchandise purchased, and in order for the operator to obtain the premium for the sale of the merchandise. 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 as a result the plan would, from a practical viewpoint, become inoperative.

The record discloses that it is only in exceptional and isolated cases that persons who pull a tab from the device refuse to accept and pay for the merchandise designated on the tab. Moreover, in respondents' instructions to their representatives, which appear on the circular, there is no direction as to what shall 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 in the event that some of the purchasers refuse to accept the article listed on the particular tab pulled. On the contrary, it is apparent from the instructions that the plan contemplates that all of the articles listed are to be sold. For example, the instructions contain the following:

Let your friends select a purchase receipt from the next page and pay you the amount printed on the back. Write their name opposite the purchase price, and let them keep the receipt. When you have sold all the 22 articles you will have collected \$7.62.

Fill out the order blank which is on the middle page of this folder, cut it out and send it to us with a money order for \$7.62, using the enclosed envelope, and we will immediately ship you the 22 articles and the AWARD that you have selected. We will also include a special gift if you send a money order with your order. ALL CHARGES ARE PREPAID BY US.

The order blank referred to in these instructions reads in part as follows:

After you have sold the 22 articles and collected \$7.62, fill out this ORDER BLANK and mail it to us and we will send you the Articles and the Award that you have selected.

Gentlemen:

Please send me one Assortment of 22 useful articles and Award No. _____ which I earned for selling the 22 useful articles amounting to \$7.62.

The Commission therefore finds that, as a practical matter, the so-called notice has no substantial effect upon the operation of the sales plan, that it does not serve to remove the lottery element from respondents' sales method.

PAR. 6. The persons to whom respondents furnish their pull-card device use such device in selling and distributing respondents' merchandise in accordance with the sales plan or method herein described. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale and distribution of their merchandise in accordance with such sales plan or method. Such merchandise is thus sold or distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents reap the benefits therefrom. The use by respondents of such sales plan or method in the sale of their merchandise, and the sale of such merchandise by and through the use thereof and by the aid 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 and in violation of the criminal laws.

PAR. 7. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondents, as set forth in paragraph 3 hereof, are unwilling to adopt and use such method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' sales method and by 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 those competitors of respondents who do not use the same or any equivalent method. The use of such method by respondents has the tendency and capacity to, and does, divert trade unfairly to respondents from such competitors.

PAR. 8. In addition to the foregoing acts and practices, the respondents represent, through the use on their circulars of such legends as "FREE GIFTS FOR ALL" and "WONDERFUL GIFTS FOR ALL," that the articles of merchandise offered to their sales representatives are free and without cost to such representatives. These representations on the part of respondents are deceptive and misleading. None of the articles of merchandise so designated is in fact given away free by respondents, but all of such articles are supplied to respondents' representatives only as compensation for services rendered in the sale of respondents' merchandise, and the price of such articles is included in the price of the other articles of merchandise which the representative must sell.

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PAR. 9. The use by respondents of the deceptive and misleading statements and representations set forth above has had and now has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the public into the erroneous and mistaken belief that such articles of merchandise are given by respondents to their representatives free and without cost, and the tendency and capacity to cause such members of the public to undertake the sale of respondents' products in preference to the products of respondents' competitors. In consequence thereof, substantial trade has been diverted to respondents 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 within the intent and meaning of the Federal Trade Commission Act.

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 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, Empire Merchandise Corporation, a corporation, its officers, and Sophie Rubman, individually and as an officer 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, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of flashlights, jewelry, watches, chinaware, silverware, clocks, cosmetics, cigarette lighters, bedding, and kitchenware, or any other merchandise, 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 respondents' merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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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 respondents' merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

4. Using the word "Free," or any other word of similar import, to designate, describe, or refer to any merchandise which is furnished as compensation for services rendered.

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

POPULAR PRODUCTS CORPORATION, MITCHELL
CINADER, AND ESTHER CINADER

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

Docket 3479. Complaint, July 9, 1938—Decision, Aug. 4, 1942

- Where a corporation and its president, who owned virtually all of its stock and controlled its policies and practices, engaged in the competitive interstate sale and distribution of novelty merchandise such as pen and pencil sets, cigarette lighters, electric lamps, chinaware, silverware, and cameras—
- (a) Distributed through the mails to prospective sales representatives throughout the United States advertising circulars which depicted and described certain articles offered as compensation for the sale of merchandise, also depicted, and which contained also a pull card for use in sale of articles listed and priced thereon, under a scheme in accordance with which the particular article to be received and the price to be paid therefor were disclosed after removal from the card of the tab selected by the customer, and the operator, after sale of all articles listed, was compensated by his choice of a premium or cash; and
- Thereby supplied and placed means of conducting lotteries in the hands of such operators who, notwithstanding notice purportedly offering customer right to buy any article involved at price shown on back of slip, made use of said pull card in sale of their merchandise; contrary to an established public policy of the United States Government and in violation of the criminal laws; and in competition with many who, 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 method and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that offered and sold by competitors who did not use such methods, whereby trade was diverted unfairly from said competitors to them; and
- (b) Represented that the articles offered to sales representatives were free and without cost to them through such statements on their circulars as "Free gifts for all" and "Beautiful, useful household gifts at absolutely no cost";
- When in fact the articles thus designated were supplied to representatives only for services rendered in sale of merchandise in question, and price thereof was included in that of the other articles which they were required to sell; with effect of misleading and deceiving a substantial number of members of the public and causing them to undertake the sale of said corporation's and individual's products in preference to those of competitors, whereby 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.

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As respects the insistence of those charged with the operation of a lottery scheme through persons whom they supplied with descriptive circulars, including pull card devices for use in selling by chance to members of the public goods, the prices and values of some of which were in excess of those shown therefor on such cards, that the lottery or chance element was removed from the scheme by a notice purportedly offering any customer the right to buy any article at price shown for it on the back of its slip: Such notice was inconsistent with the sale of the articles called for under the plan by the operator—who, after sale of all chances, was to remit to sellers and receive from them said goods for distribution to purchasers as shown on card, and who was compensated, at his option, by deduction of cash premium or receipt of merchandise premium along with aforesaid other goods—was inconsistent with the instructions to the operator which made no provision for any such contingency, was inconsistent with the effective working of the plan, and was, it appeared, taken advantage of only in exceptional and isolated cases, and, as a practical matter, had no substantial effect upon the operation of the plan and did not serve to remove the lottery element from sellers' sales method.

Before *Mr. Randolph Preston, Mr. Miles J. Furnas, Mr. John W. Addison* and *Mr. Andrew B. Duvall*, 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 Popular Products Corporation, a corporation, and Mitchell Cinader and Esther Cinader, individually, and as officers of the Popular Products 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, Popular Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 104 West Seventeenth Street, New York, N. Y. Respondent, Mitchell Cinader, is president, secretary and treasurer of said corporation, and respondent, Esther Cinader, is vice president of said corporation. The individual respondents have their offices and principal place of business at the same address as the corporate respondent. Said individual respondents, as officers of said corporation, control and direct the policies,

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acts, and practices thereof. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been, engaged in the sale and distribution of pen and pencil sets, cigaret lighters, electric lamps, china and silverware, cameras, clocks, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products when sold to be shipped or transported from their place of business in the State of New York to purchasers thereof in 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 in commerce by said respondents in such merchandise between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of similar or like articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and distribute said articles of merchandise by means of a lottery scheme or game of chance. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondents' merchandise is distributed to the purchasers thereof in the following manner:

A portion of said sales circular consists of a list on which 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 consuming 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 of greater value than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, the said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute various assortments of said merchandise and furnish 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 plans or methods vary in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said 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 the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the

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respondents, as above alleged, are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale thereof, 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 have caused various false, deceptive, and misleading statements to appear in their advertising matter as aforesaid, of which the following are examples, but are not all-inclusive:

Gifts for all at no cost to you.

Additional Surprise Gift.

Absolutely free.

Free. You get Two Premiums with Each Order.

Free Additional Premium.

Given Free.

Others of said statements and representations appearing in respondents' said advertising matter are as follows:

All Shipping Charges are Paid by Us.

We prepay all Shipping Charges Right to your door on all Merchandise and all Premiums.

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free" or without cost, but said premiums or gifts, which are represented as being "free" to said representatives, are either purchased with labor by them or the price of said premiums or gifts is included in the price of other articles of merchandise which the representatives must sell or secure the sale of before said premiums or gifts can be procured by them. For a number of the 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, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase or sale of substantial quantities of said respondents' products, as a result of such erroneous belief. There are, among the competitors of respondents as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive and misleading statements and representations concerning their products. By the statements and representations aforesaid trade is unfairly diverted to respondents from such competitors and, as a result thereof, substantial injury is being done and has been done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 9, 1938, issued and subsequently served its complaint in this proceeding upon the respondents, Popular Products Corporation, a corporation, and Mitchell Cinader and Esther Cinader, individually and as officers of Popular Products Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. No answer was filed by the respondents to the complaint. Testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorney for the respondents, before trial examiners 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, testimony, and other evidence, report of the trial examiners 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:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Popular Products Corporation, 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 now located at 243 West Seventeenth Street, New York, N. Y. Its former address was 104 West Seventeenth Street, in that city.

Respondent, Mitchell Cinader, is president of the corporate respondent. He is the owner of virtually all of the capital stock of the corporation, and formulates, directs, and controls all of the policies, acts, and practices of the corporation.

While the complaint herein also named Esther Cinader, vice president of the corporation, as a respondent in this proceeding, the evidence discloses that this respondent has not participated actively in the management of the corporation, and the Commission is of the opinion that the proceeding should be dismissed as to this respondent. The term "respondents," therefore, as used hereinafter, will not include respondent Esther Cinader unless the contrary is indicated.

PAR. 2. The respondents are now and since 1924 have been engaged in the sale and distribution of merchandise generally designated as novelty merchandise and including such articles as pen and pencil sets, cigarette lighters, electric lamps, chinaware, silverware, cameras, clocks, jewelry, cosmetics, bedding, and kitchenware. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. 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 respondents are, and have been, in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In promoting the sale of their products respondents distribute advertising or sales circulars through the United States mails to prospective sales representatives located at various points throughout the United States. These circulars contain pictorial representations and descriptive matter with respect to certain articles of merchandise offered by respondents as compensation for the sale of their merchandise, and also pictorial representations and descriptive mat-

ter as to certain of the articles of merchandise which respondents offer for sale.

Each of these circulars also contains what is commonly known as a pull-card device. The pull-card device consists of a number of tabs, under each of which is concealed the name of one of the articles of merchandise offered for sale by respondents and the price thereof. Neither the name of the article nor the price thereof is disclosed to the purchaser or prospective purchaser until after the tab has been separated or removed from the card. Adjacent to the pull tabs is a list of all of the articles of merchandise offered for sale and the price thereof, which corresponds to the articles and prices concealed under the various pull tabs. When a purchaser has detached a tab and there is thus disclosed which article he is to receive and the price to be paid for it, his name is written on the list opposite the particular article of merchandise.

Some of the articles of merchandise offered for sale have retail values greater than the prices so designated for them, but all of the articles are distributed to the purchasers at the prices on the tabs. The fact that some of such articles of merchandise have values in excess of the designated prices induces members of the purchasing or consuming public to pull the tabs in the hope that they will obtain such articles. Moreover, some of the articles offered for sale are represented through pictures and reading matter in the circular as having values greater than their actual value, which serves as a further inducement to prospective purchasers to pull the tabs in an effort to obtain such articles. The specific article which the purchaser receives, the amount of money he is required to pay for such article, and the question whether the purchaser will receive an article having an actual or apparent value greater than the price designated therefore are thus determined wholly by lot or chance.

When the individual operating the pull card has succeeded in selling all of the articles of merchandise listed under the tabs, and has collected the respective amounts charged therefor, the total of such amounts is remitted to respondents. Upon receipt of such total amount, respondents ship to their representative the merchandise sold, together with a premium for the representative as compensation for operating the device and selling and distributing the merchandise, such premium having been selected by the representative from articles pictured in the circular. If the representative so desires, he may deduct a cash premium in lieu of the merchandise premium. Upon receipt of the merchandise from respondents, the representative delivers the various

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articles to the purchasers in accordance with the list prepared when the tabs were pulled.

PAR. 5. In connection with the pull-tab device the following reading matter appears:

NOTICE TO PURCHASER.—On 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.

Respondents insist that the insertion of this notice has the effect of removing the lottery or chance element from their sales method. The Commission finds, however, that despite this notice, the articles of merchandise are in fact sold and distributed by means of the pull-card device in accordance with the sales plan or method hereinbefore described. The successful operation of respondents' sales plan is dependent upon the ability of the operation to sell all of the articles listed, so as to permit remittance of the required amount to respondents in order to obtain the merchandise purchased, and in order for the operator to obtain the premium for the sale of the merchandise. The operation of the plan strictly in accordance with the so-called "Notice to Purchaser" would not tend to net the operator a return sufficient to warrant completion of the plan, and as a result the plan would, from a practical viewpoint, become inoperative.

The record discloses that it is only in exceptional and isolated cases that persons who pull a tab from the device refuse to accept and pay for the merchandise designated on the tab. Moreover, in respondents' instructions to their representatives, which appear on the circular, there is no direction as to what shall 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 in the event that some of the purchasers refuse to accept the article listed on the particular tab pulled. On the contrary, it is apparent from the instructions that the plan contemplates that all of the articles listed are to be sold. For example, the instructions contain the following:

You ask your friends and neighbors to pull one or more of the Purchase Receipts on the next page. On the back of each slip you will find the name of an article and its price plainly marked. You collect from the purchasers the price stated on the slip for which they will receive the article mentioned on it. The prices start at 9¢ and no article costs more than 39¢. When all the articles have been sold, you will have collected \$7.39. Then detach and fill out order blank and be sure you mark the premium you want for your size and send it to us together with a money order for \$7.39. We will immediately mail you the 21 articles together with the premium which you have selected and a beautiful and valuable surprise premium.

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The order blank referred to in these instructions reads in part as follows:

After you have sold the 21 articles of merchandise and collected \$7.39, fill out this blank, stating the correct number of premium you have selected. Also write your name and address plainly, and mail it to us.

Popular Products Corp., 104 W. 17th St., New York, N. Y. Please ship at once, all charges prepaid, the 21 articles of merchandise I sold amounting to \$7.39 and one of the valuable premiums.

REWARD PREMIUM NO. _____ Color _____

The Commission therefore finds that, as a practical matter, the so-called notice has no substantial effect upon the operation of the sales plan, that it does not serve to remove the lottery element from respondents' sales method.

PAR. 6. The persons to whom respondents furnish their pull-card device use such device in selling and distributing respondents' merchandise in accordance with the sales plan or method herein described. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale and distribution of their merchandise in accordance with such sales plan or method. Such merchandise is thus sold or distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents reap the benefits therefrom. The use by respondents of such sales plan or method in the sale of their merchandise, and the sale of such merchandise by and through the use thereof and by the aid 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 and in violation of the criminal laws.

PAR. 7. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondents, as set forth in paragraph 3 hereof, are unwilling to adopt and use such method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' sales method and by 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 those competitors of respondents who do not use the same or any equivalent method. The use of such method by respondents has the tendency and capacity to, and does, divert trade unfairly to respondents from such competitors.

PAR. 8. In addition to the foregoing acts and practices, the respondents represent, through the use on their circulars of such legends as "FREE GIFTS FOR ALL" and "Beautiful Useful Household Gifts at Absolutely No Cost," that the articles of merchandise offered to

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their sales representatives are free and without cost to such representatives. These representations on the part of respondents are deceptive and misleading. None of the articles of merchandise so designated is in fact given away free by respondents, but all of such articles are supplied to respondents' representatives only as compensation for services rendered in the sale of respondents' merchandise, and the price of such articles is included in the price of the other articles of merchandise which the representative must sell.

PAR. 9. The use by respondents of the deceptive and misleading statements and representations set forth above has had and now has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the public into the erroneous and mistaken belief that such articles of merchandise are given by respondents to their representatives free and without cost, and the tendency and capacity to cause such members of the public to undertake the sale of respondents' products in preference to the products of respondents' competitors. In consequence thereof, substantial trade has been diverted to respondents 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 within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiners 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, Popular Products Corporation, a corporation, its officers, and Mitchell Cinader, individually and as an officer 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, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act,

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of pen and pencil sets, cigarette lighters, electric lamps, chinaware, silverware, cameras, clocks, jewelry, cosmetics, bedding, and kitchenware, or any other merchandise, 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 respondents' 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 respondents' merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

4. Using the word "Free," or any other word of similar import, to designate, describe, or refer to any merchandise which is furnished as compensation for services rendered.

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

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondent, Esther Cinader.

Complaint

IN THE MATTER OF

VINTON T. JAMES AND GEORGE E. JAMES, TRADING AS
J & J 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 4769. Complaint, June 4, 1942—Decision, Aug. 4, 1942

Where a firm, engaged in competitive interstate sale and distribution of candy, including certain assortments which were so packed and assembled as to involve and make use of lottery schemes and games of chance, typical one being composed of 60 uniform bars, together with a push card for use in their sale and distribution under a plan by which amounts paid, if any, ranging from 1 to 3 cents, were determined by number secured by chance—
Sold such assortments for resale to purchasers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan involving sale of chance to procure candy bars without cost or at less than their normal retail price; and thereby supplied to and placed in their hands the means of conducting lotteries;

With the result that many persons were attracted by such sales plan and the element of chance involved therein, and were thereby induced to buy and sell said candy in preference to that of competitors who do not use such methods; whereby trade was diverted from such competitors to them, to the injury of competition:

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

Mr. J. V. Mishou and Mr. J. W. Brookfield, Jr., for the Commission.
McDougle & Ervin, 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 Vinton T. James and George E. James, individually and trading as J & J Candy Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Vinton T. James and George E. James, are copartners, doing business under the firm name and style of J & J Candy Co., with principal office and place of business located at 1507 West Trade Street, Charlotte, N. C. Respondents are now and for more than 2 years last past have been engaged in the business of manufacturing, distributing, and selling candies.

PAR. 2. In the course and conduct of their said business respondents cause and have caused their candies to be transported from their principal place of business in Charlotte, N. C., into the State of South Carolina, for sale in the latter State, and sell and have sold in South Carolina the candies so transported. In said business respondents are engaged in competition with other persons and corporations, located both within and without the State of South Carolina, selling candies and offering the same for sale to customers in South Carolina.

PAR. 3. Respondents accomplish the distribution and sale of their said candies by the following method, among others: Respondents transport their candies by automobile from Charlotte, N. C., to various parts of South Carolina and there place said candies in the hands of various consignees of respondents for sale on behalf of respondents at retail. Said consignees, upon selling the consigned candies and collecting the purchase price therefor (which price is fixed by respondents) retain an agreed commission as compensation for their services and pay the balance of the proceeds of such sales to respondents.

PAR. 4. A substantial portion of the candies which respondents transport to and sell in South Carolina, as aforesaid, are assorted, packed, and assembled so as to involve and make use of lottery schemes and games of chance in connection with and to promote the sale thereof to consumers. The following description of one of such candy assortments with its accompanying lottery scheme illustrates the method of sale used by respondents:

This assortment is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3 inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1, 2, and 3 cents, respectively. Purchasers punching number 0 pay nothing. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondents furnish, and have furnished, various push cards to purchasers and consignees for use in connection with, and to promote, the sale and distribution of respondents' said candies by means of a game of chance or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 5. Purchasers and consignees of respondents' candies expose and sell the same to the purchasing public in accordance with the sales

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plan aforesaid. Respondents thus supply to and place in the hands of said purchasers and consignees the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth.

PAR. 6. The sale of candy to the purchasing public by the method or plan employed by respondents, as hereinabove described, involves a game of chance or the sale of a chance to procure bars of candy without cost or at prices less than the normal retail price thereof. Many persons are attracted by such a sales plan or method and in the element of chance involved therein, and are thereby induced to buy and sell respondents' candy in preference to candy of competitors of respondents who do not use the same or equivalent methods. The use of such methods by respondents has a tendency and capacity to unfairly divert trade to respondents from their said competitors who do not use the same or equivalent methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 4, 1942, issued and thereafter served its complaint in this proceeding upon respondents Vinton T. James and George E. James, individuals and copartners, doing business as J & J Candy Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 8, 1942, the respondents filed their answers, 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 proceedings is in the interest 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, Vinton T. James and George E. James, are copartners, doing business under the firm name and style of J & J Candy Co., with their principal office and place of business located at

1507 West Trade Street, Charlotte, N. C. Respondents are now and for more than two years last past have been engaged in the business of manufacturing, distributing, and selling candies.

PAR. 2. In the course and conduct of their said business respondents cause and have caused their candies to be transported from their principal place of business in Charlotte, N. C., into the State of South Carolina, for sale in the latter State, and sell and have sold in South Carolina the candies so transported. In said business respondents are engaged in competition with other persons and corporations, located both within and without the State of South Carolina, selling candies and offering the same for sale to customers in South Carolina.

PAR. 3. Respondents accomplish the distribution and sale of their said candies by the following method, among others: Respondents transport their candies by automobile from Charlotte, N. C., to various parts of South Carolina and there place said candies in the hands of various consignees of respondents for sale on behalf of respondents at retail. Said consignees, upon selling the consigned candies and collecting the purchase price therefor (which price is fixed by respondents), retain an agreed commission as compensation for their services and pay the balance of the proceeds of such sales to respondents.

PAR. 4. A substantial portion of the candies which respondents transport to and sell in South Carolina, as aforesaid, are assorted, packed and assembled so as to involve and make use of lottery schemes and games of chance in connection with and to promote the sale thereof to consumers. The following description of one of such candy assortments with its accompanying lottery scheme illustrates the method of sale used by respondents:

This assortment is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1, 2, and 3 cents, respectively. Purchasers punching number 0 pay nothing. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondents furnish, and have furnished, various push cards to purchasers and consignees for use in connection with, and to promote, the sale and distribution of respondents' said candies by means of a game of chance or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

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PAR. 5. Purchasers and consignees of respondents' candies 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 said purchasers and consignees the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth.

PAR. 6. The sale of candy to the purchasing public by the method or plan employed by respondents, as hereinabove found, involves a game of chance or the sale of a chance to procure bars of candy without cost or at prices less than the normal retail price thereof. Many persons are attracted by such a sales plan or method and in the element of chance involved therein, and are thereby induced to buy and sell respondents' candy in preference to candy of competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents, because of said game of chance, has a tendency and a 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. As a result thereof, injury is being, and has been, done by respondents to competition in commerce between and among various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade 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, Vinton T. James and George E. James, individually and as copartners trading as J & J 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

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

1. Selling or distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the 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 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

THE RUDOLPH WURLITZER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4525. Complaint, June 26, 1941—Decision, Aug. 5, 1942*

Where a corporation, engaged in the manufacture and interstate sale and distribution at wholesale of pianos covered or finished in whole or in part with a material, made exclusively for it, and designated by it "Kordevon"—

Represented or implied, through use of aforesaid, commonly pronounced "Cordovan," term, in advertisements of its said products and in the labels attached thereto, that said "Kordevon" was Cordovan leather;

The facts being that the material in question was a closely woven cotton fabric with several coats of pyroxylin plastic deposited thereon, the appearance, texture and feel of which was such as to induce the public into the belief that it was genuine leather; and subsequent use in advertising of words "Plastic Fabric," immediately after word "Kordevon," on its labels of words, parenthetically, "A plastic fabric" in small print, and on the back of each piano, the statement, "In the manufacture of the covering for this piano, 10 coats of pyroxylin plastic are used" were insufficient to correct aforesaid erroneous impression;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that the covering or finishing material on said pianos was genuine Cordovan leather; and of thereby causing it to purchase substantial quantities of said pianos, because of such mistaken belief, whereby 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.

Mr. Eldon P. Schrup for the Commission.

Harmon, Colston, Goldsmith & Hoadly, of Cincinnati, Ohio, and

Mr. Ike Lanier and *Mr. Elden McFarland*, 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 Rudolph Wurlitzer Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of

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Ohio, with its principal office and place of business at 121 East Fourth Street, in the city of Cincinnati, State of Ohio. The respondent is, and for more than 2 years last past has been, engaged in the business of manufacturing pianos, covered or finished, in whole or in part, with a material designated by respondent as "Kordevon," and in selling and distributing said pianos at wholesale to dealers, to be resold by said dealers to the purchasing public. Respondent has caused, and now causes, its said pianos, when sold, to be transported from its manufacturing plant in the city of De Kalb, State of Illinois, to the purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said pianos in commerce among and between the several States of the United States, and in the District of Columbia.

Respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, firms, partnerships, and individuals engaged in the sale and distribution of pianos in commerce among and between 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 said pianos, respondent has caused, and now causes, advertisements to be inserted in newspapers, magazines, and trade journals having wide interstate circulation, and has distributed; and now distributes, circulars and letters to the purchasing public in various States of the United States and in the District of Columbia. In said advertisements, circulars, and letters, so distributed, many false and misleading statements and representations are made by the respondent in which the term "Kordevon" is prominently used as the trade name for, and as being descriptive of, the material used as a covering or finishing material, in whole or in part, for respondent's pianos. Typical of the statements and representations so made and circulated by the respondent are the following:

* * * A Piano that Actually *Blends* with your Home * * * Now, at last, Wurlitzer solves this major problem for you with America's most colorful piano—a refreshingly new Wurlitzer finished in the exclusive new Kordevon. Kordevon, with its soft, rich texture, offers you a variety of tasteful colors with which to enhance the beauty of your living room—Kordevon is durable, too—defies extremes of heat or cold, dampness or dryness—is easy to keep fresh and beautiful.

Wurlitzer is the first to use Kordevon which evokes a new epoch in luxurious piano finishing.

Finished in Kordevon, a remarkably beautiful and durable finish featured exclusively by Wurlitzer.

Finished in colorful Kordevon.

Wurlitzer is first with Kordevon, a new finish, hailed with enthusiasm by leading decorative authorities for its unique beauty, its soft, rich texture, its variety of tasteful shades.

In advertisements published in trade magazines, and intended for the trade and for respondent's dealers but not for the purchasing public, respondent has represented the covering or finishing material used on its pianos as follows:

RESEMBLES TOOLED LEATHER.

In appearance Kordevon is almost exactly like lightly tooled leather. In fact, the average layman would likely think it was leather unless told otherwise.

PAR. 3. Cordovan is the name by which, as a result of long usage and custom, an excellent grade and type of colored leather has become known to the purchasing and consuming public. Cordovan was originally manufactured in the Middle Ages at Cordova, Spain, of goatskin, and later of pigskin, and especially of fine horsehide split so as to retain its grain. This type of leather is still so made, and is used in the manufacture of men's shoes, saddles, and other products where a fine, durable, and attractive grade of leather is desired. There is a preference among members of the purchasing public for cordovan leather over other types and grades of leather owing to its superior quality and wide reputation for excellence.

PAR. 4. "Kordevon," the name by which respondent designates the covering or finishing material for its said pianos, is a product resembling tooled leather in appearance, and is manufactured exclusively for the respondent. Its basic structure is that of a closely woven cotton fabric on which are deposited several coats of pyroxylin plastic, each coat heated and dried in an oven before the next coat is applied. After the final coat has dried the so-called "Kordevon" grain is created by the application of pressure by means of an etched steel plate. An irregularity in texture is obtained by a final hand operation.

PAR. 5. By means of the use of the aforesaid term "Kordevon," which closely simulates and conforms to the spelling and pronunciation of cordovan, in describing the covering or finishing material of its said pianos, respondent has represented and implied, and now represents and implies, that said covering is cordovan, that is to say, a fine, durable, and expensive leather made from split horsehide, goatskin, or pigskin.

In truth and in fact, respondent's said covering or finishing material for its pianos is not cordovan, and does not have the qualities of cordovan leather, but is, in fact, a closely woven cotton fabric, coated

with a plastic material, and finished in such a way as to have the appearance of leather.

PAR. 6. When respondent's dealers display the said pianos, there is nothing to indicate to prospective purchasers the true composition and nature of the covering or finishing material appearing thereon. The only side of the said material exposed to the view highly resembles leather, and feels like leather when touched. It is finished so as to have the appearance of being a beautifully grained leather, and its appearance and texture have the tendency to convey the impression and induce the belief among prospective purchasers that the said covering or finishing material is genuine leather. The said material is not leather, but is, in fact, a cotton fabric coated with plastic, and is in imitation of genuine leather.

PAR. 7. The use by the respondent of the foregoing false and misleading statements, representations and implications, as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive, and has misled and deceived, and does now mislead and deceive, purchasers and prospective purchasers into the erroneous and mistaken belief that such statements, representations, and implications are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's pianos.

The use by respondent of the said false and misleading statements, representations, and implications has placed in the hands of respondent's dealers a means and instrumentality whereby said dealers have been, and are, enabled to mislead and deceive members of the purchasing public into believing that said statements and representations were and are true. As a result, trade has been diverted unfairly to respondent from respondent's competitors, who do not use "Kordevon" as a covering or finishing material for their pianos, and who do not falsely represent the quality, nature, or character of the covering or finishing material used, and injury has been done by respondent to competition in commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 26, 1941, issued and subse-

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quently served its complaint in this proceeding upon the respondent, The Rudolph Wurlitzer 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 that act. On August 4, 1941, the respondent filed its answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondent through its counsel and Richard P. Whiteley, Assistant Chief Counsel for the Commission, subject to the approval of the Commission, might be made a part of the record herein and 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. The stipulation further provided, however, that the right to file briefs and present oral argument on the law and on the interpretation of the facts stipulated was reserved.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulation (the stipulation having been approved and accepted by the Commission and entered of record), and briefs by counsel for the Commission and counsel for the respondent (oral argument having been waived); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Rudolph Wurlitzer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with the principal office and place of business at 121 East Fourth Street, Cincinnati, Ohio. Respondent is now and for more than 2 years last past has been engaged in the business of manufacturing pianos covered or finished in whole or in part with a material designated by respondent as "Kordevon," and in selling and distributing such pianos at wholesale to dealers to be resold by such dealers to the purchasing public.

PAR. 2. Respondent causes and has caused its pianos, when sold, to be transported from its manufacturing plant located in De Kalb,

Ill., to purchasers thereof located 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 pianos in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. 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 pianos in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its pianos, respondent causes and has caused advertisements to be inserted in newspapers, magazines, and trade journals having wide interstate circulation, and distributes and has distributed circulars and letters to the purchasing public in various States of the United States and in the District of Columbia. In these advertisements, circulars, and letters so distributed, many statements and representations are made by respondent in which the term "Kordevon" is prominently used as the trade name for, and as being descriptive of, the material used in whole or in part as a covering or finishing material for respondent's pianos. Typical of the statements and representations so made and circulated by the respondent are the following:

* * * A Piano that Actually *Blends* with your Home * * * Now, at last, Wurlitzer solves this major problem for you with America's most colorful piano—a refreshingly new Wurlitzer finished in the exclusive new Kordevon.

Kordevon, with its soft, rich texture, offers you a variety of tasteful colors with which to enhance the beauty of your living room—Kordevon is durable, too—defies extremes of heat or cold, dampness, or dryness—is easy to keep fresh and beautiful.

Wurlitzer is the first to use Kordevon which evokes a new epoch in luxurious piano finishing.

Finished in Kordevon, a remarkably beautiful and durable finish featured exclusively by Wurlitzer.

Finished in colorful Kordevon.

Wurlitzer is first with Kordevon, a new finish, hailed with enthusiasm by leading decorative authorities for its unique beauty, its soft rich texture, its variety of tasteful shades.

A piano that embodies all the variety of color, texture, and grain hitherto obtainable only in the most expensive custom-built instruments. This is made possible through the use of Kordevon, a remarkably beautiful and durable new finish featured exclusively by Wurlitzer. Though delicately grained in texture, the surface can withstand severe abuse without showing signs of scuffing or scratching.

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Introduces a new and finer finish

KORDEVON

new texture—new color—greater durability.

Finished in colorful, soft textured Kordevon, a unique new finish exclusive with Wurlitzer. Wurlitzer is the first to use luxurious, richly textured Kordevon, a finish of amazing durability. What is more, Kordevon is available in a great variety of color combinations.

PAR. 5. The definitions of Cordovan, as found in Webster's New International Dictionary, Second Edition, 1937, are as follows:

Cor' do-van (kor' dē. van; orig. accented cor' do. van') adj. [Sp. cordoban, fr. cordoba, or Cordova in Spain, fr. L. Corduba. Cf. Cordwain.] Of or pertaining to Cordova; [not cap.] made of the leather manufactured at Cordova.

Cor' do-van, n. 1. A native or inhabitant of Cordova.

2. [not cap.] Cordovan leather; esp., a soft, fine-grained, colored leather, chiefly manufactured in the Middle Ages, at Cordova, Spain, of goatskins, and afterwards of split horsehides, goatskins, pigskins, etc., and esp. of fine horsehides split so as to retain their grain.

3. [not cap.] A brown, red-yellow in hue, of low saturation and low brilliance. Called also woodland brown. Cf. Color.

PAR. 6. The word or term "Kordevon" used by respondent to describe the covering or finishing material for its pianos is commonly given a pronunciation similar to the pronunciation given the word or term "Cordovan."

PAR. 7. Cordovan leather is frequently used in the present-day manufacture of men's shoes, saddles, and other products where a fine, durable, and attractive grade of leather is desired, and there is a preference among some members of the purchasing public for articles made from cordovan leather.

PAR. 8. The material used by respondent to cover its pianos is manufactured exclusively for respondent. When applied, the material has only one side exposed to view, which side highly resembles grained leather in appearance and has the feel of leather. Its appearance, texture, and feel are such as to convey the impression and induce the belief that the material is genuine leather.

Actually, however, the material is neither cordovan leather nor leather of any kind, but is a closely woven cotton fabric on which are deposited several coats of pyroxylin plastic. Each coat is heated and dried in an oven before the next coat is applied. After the final coat has dried, the so-called "Kordevon" grain is created by the application of pressure by means of an etched steel plate. An irregularity in texture is obtained by a final hand operation.

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PAR. 9. Pianos finished in "Kordevon" were first offered to the public by respondent in January 1939. Each piano offered for sale by respondent since that time has borne the following label:

NOTICE

The Finish on this piano is genuine

WURLITZER KORDEVON

It is waterproof and will maintain its beautiful finish almost indefinitely if kept properly clean.

FOR CLEANING

USE ONLY MILD (IVORY) SOAP AND A DAMP CLOTH

Avoid an excessively wet cloth as excessive moisture may run into your piano and cause damage.

DO NOT USE CLEANING FLUIDS, WAXES, POLISHES, OR HARD CAUSTIC SOAPS. DUST OFTEN WITH A CLEAN DRY CLOTH.

Since June 1939 a further label has been affixed by respondent to the back of each of its pianos, which reads as follows:

KORDEVON

BUILT BY

THE RUDOLPH WURLITZER COMPANY

DE KALB, ILLINOIS

IN THE MANUFACTURE OF THE COVERING FOR THIS PIANO, TEN COATS OF PYROXYLIN PLASTIC ARE USED

PAR. 10. The Commission finds that the use by respondent of the term "Kordevon" to designate and describe its material, particularly when viewed in the light of the appearance and feel of the material itself, is misleading to the public in that the term represents or implies that the material is cordovan leather.

Respondent since May 1940 has inserted in all of its advertising material the words "plastic fabric" immediately after the word "Kordevon," wherever such word has been used. Since that date, also, the words "a Plastic Fabric" have been added parenthetically, in small print, to the labels described above.

The Commission finds, however, that these terms are insufficient to correct the erroneous and misleading impression created by the use of the word "Kordevon." Likewise, the use by respondent on its labels of the statement, "In the manufacture of the covering for this piano, ten coats of pyroxylin plastic are used," is insufficient to correct such erroneous and misleading impression.

PAR. 11. The acts and practices of the respondent as herein described have the tendency and capacity to mislead and deceive, and have mis-

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led and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the covering or finishing material on respondent's pianos is genuine cordovan leather; and cause and have caused such portion of the public to purchase substantial quantities of respondent's pianos 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 who do not engage in similar acts and practices.

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 the respondent, a stipulation as to the facts entered into between the respondent through its attorney and Richard P. Whiteley, Assistant Chief Counsel for the Commission, and briefs in support of and in opposition to the complaint (oral argument having been waived), 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, The Rudolph Wurlitzer Co., 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 pianos in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Kordevon," or any other word or term which simulates in spelling or phonetics the word "Cordovan," as a trade name for, or as descriptive of, any covering or finishing material for pianos which is not in fact cordovan leather.
2. Representing in any manner that the covering or finishing material used for respondent's pianos is leather, when such material is in fact other than leather.

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

IN THE MATTER OF

BENJAMIN GOLDMAN, TRADING AS TIGER YARN COMPANY, MINNETTE YARN COMPANY, BENGU YARN SHOP, AND GOLDMAN'S YARN SHOP

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914.

Docket 4625. Complaint, Nov. 5, 1941—Decision, Aug. 5, 1942

Where an individual, engaged under various trade names in interstate sale and distribution of knitting yarns to the purchasing public direct and to retail dealers—

- (a) Made use in catalogues or on color cards and on labels attached to certain of his yarns, of such terms as "Heavy Tweed Velva," "Shetland Floss," "Camel's Hair," "Cashmere De Laine" and "Sport Angora";

The facts being the yarns thus designated were not, as understood by a substantial portion of the purchasing public from the terms "Tweed," "Shetland," "Camel's Hair," "Cashmere," and "Angora," respectively composed entirely of wool, of yarn made from the wool of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland, of camel's hair, or hair of the Cashmere or the Angora goat, but said "Tweed" yarns were not composed of wool or contained wool mixed with other fibers, in case of "Heavy Tweed Velva" in the proportion of about 65 percent wool and 35 percent rayon; said "Shetland" yarns were made entirely of domestic wool; said "Camel's Hair" was made principally of wool and contained little, if any, camel's hair; said "Cashmere" contained fibers other than the hair of the Cashmere goat; and said "Sport Angora" contained about 80 percent wool and 20 percent rabbit's hair; and members of public in purchasing product represented as made of said wools or hairs have a preference for the genuine article rather than a substitute for or simulation thereof;

- (b) Falsely represented yarns composed of varying mixtures of wool, cotton, and rayon as being composed in part of silk through application to such products of such legends as, "A fine silk and wool mixture of four-ply"; "A fine mixture of silk and cotton"; "Silk Flake * * * A cotton and silk combination"; "A beautiful and lustrous mixture of silk and zephyr"; and "A very attractive yarn of silk and pure wool";
- (c) Misrepresented said yarns through failure to disclose that they were composed in part of rayon which, when so made as to simulate silk or wool, has the feel and appearance thereof, and is practically indistinguishable therefrom; as a result whereof a substantial portion of the purchasing public bought said yarns as composed of the genuine product simulated;
- (d) Designated one of his yarns composed entirely of wool and rayon as "Crepe," notwithstanding fact that a substantial portion of the purchasing public understand products so designated to be made of silk, product of the cocoon of the silk worm; and
- (e) Represented, through use of words "Importers and Jobbers of Worsteds Yarns—Angoras—Cotton" in connection with his trade name "Tiger Yarn

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Co.," that he was an importer and imported certain yarns offered, and that certain of his said yarns were made of or contained fibers which, not produced in this country, are imported from foreign countries;

The facts being he imported no yarns or fibers from foreign countries, said company was not an importer, and there is a preference on the part of a substantial portion of the purchasing public for dealing direct with importers and for purchasing foreign products;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said statements were true, thereby inducing purchase by it of substantial quantities of 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.

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

Mr. Donovan Divet 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 Benjamin Goldman, individually and trading as Tiger Yarn Co., Minnette Yarn Co., Bengo Yarn Shop, and Goldman's Yarn Shop, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Benjamin Goldman, is an individual, trading as Tiger Yarn Co., Minnette Yarn Co., Bengo Yarn Shop, and Goldman's Yarn Shop, with his principal place of business located at 1643 Bathgate Avenue, The Bronx, 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. The word "tweed" has been long and favorably known to the purchasing and consuming public as descriptive of products composed entirely of wool.

The word "Shetland" has been long and favorably known to the purchasing and consuming public as descriptive of products made from the wool of Shetland sheep raised on the Shetland Islands or on the contiguous mainland of Scotland.

The word "Cashmere" has been long and favorably known to the purchasing and consuming public as descriptive of products composed entirely of the hair of the Cashmere goat.

The word "Angora" has been long and favorably known to the purchasing and consuming public as descriptive of products made from the hair of the Angora goat.

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.

The word "crepe" is a word which has been long and favorably known to the purchasing and consuming public as descriptive of a certain type of product made of silk, the product of the cocoon of the silkworm.

Silk, tweed, Shetland, Cashmere, and Angora products for many years have held and still hold great public esteem for their preeminent qualities, and in the purchase of knitting yarns there has long been, and now is, a preference for said products on the part of a substantial number of the members of the purchasing public, as well as a preference for dealing directly with the importers of yarns and fabrics.

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.

PAR. 4. In the course and conduct of his aforesaid business in connection with the offering for sale, sale, and distribution of his products in commerce, and for the purpose of inducing the purchase thereof by the public, respondent has made or caused to be made various statements and representations purportedly descriptive of his business and his products, and of the place of origin of, and the nature of the constituent fibers or materials of his products, to be inserted in catalogs, sample books, labels and other printed and writ-

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ten material and on his letterheads, which he has 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 and descriptions of the respondent's said yarns and of their constituent fibers and materials used by respondent are false and misleading. Among and typical of such false and misleading designations, descriptions, statements, and representations are the following:

"Scotch Tweed," "Tropical Tweed," "Tweed Velna," "Zephyr Tweed," "Two-Tone Zephyr Tweed," and "Heavy Tweed Velna" used as descriptive of yarns not composed entirely of wool.

"Shetland Floss" used as descriptive of yarns made neither entirely, nor in part, from the fleece of Shetland Sheep raised on the Shetland Islands, the contiguous mainland of Scotland, or elsewhere.

"Camel's Hair" to designate and describe a yarn which, in fact, contains practically no camel hair but is made almost entirely of other materials.

"Cashmere De Laine" and "Cashmere Sport Yarn" to designate and describe yarns which are not made in whole or in part from the hair of the Cashmere goat.

"Sport Angora" and "Angoray" to designate and describe yarns which are not made in whole or in part from the hair of the Angora goat.

"A fine silk and wool mixture" used as descriptive of a certain one of respondent's said yarns designated by respondent as "Pompador Zephyr," which said yarn is, in fact, made entirely of wool and rayon; "A fine mixture of silk and cotton" used as descriptive of respondent's yarn "Tropical Tweed," a yarn which is, in fact, composed of cotton and rayon; "A fine yarn mixed with a contrasting silk nub" used as descriptive of respondent's yarn "Tweed Velna," which is, in fact, composed of wool and rayon; "Cotton and silk combination" used as descriptive of respondent's yarn "Silk Flake," which is, in fact, composed entirely of cotton and rayon; "A beautiful mixture of six colors of silk woven into a fine grade of wool," used as descriptive of respondent's yarn "Mystic Velna," which is, in fact, composed entirely of wool and rayon; "A beautiful and lustrous mixture of silk and zephyr" used as descriptive of respondent's yarn "Zephyr Paradise," which is, in fact, composed entirely of rayon and wool; "A very attractive yarn of silk and pure wool" used as descriptive of respondent's yarn "Silk-Wool," which is, in fact, composed entirely of rayon and wool; "Tri-Colored Tweed of Zephyr Yarn twisted with a contrasting silk nub," used as descriptive of respondent's yarn "Two-Tone Zephyr Tweed," which is in fact composed entirely of wool and rayon.

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"Crinkle Crepe" and "New crepe creation of zephyr wool twisted with same color of silk strand," used as descriptive of respondent's yarn "Crinkle Crepe," which contains no silk and is in fact composed entirely of wool and rayon; by use of the word "Crepe" as well as by use of the word "Silk," the respondent represents that said yarn "Crinkle Crepe" is silk, the product of the cocoon of the silkworm, whereas in fact said yarn is composed entirely of wool and rayon.

In addition to misrepresenting certain of its yarns by the use of the word "Silk" as heretofore alleged, the respondent, by failing to disclose the rayon content of said yarns and of others of his yarns designated by respondent by the names given hereafter, each of which yarns resembles silk in whole or in part, represents that each of said yarns is silk, the product of the cocoon of the silkworm, or that that part of the yarn which resembles silk is silk, the product of the cocoon of the silkworm, whereas said yarns in fact contain no silk, the product of the cocoon of the silkworm. The said yarns so misrepresented by respondent's failure to disclose their rayon content are designated by respondent as follows: "Pompadour Zephyr," "Velna," "Tweed Velna," "Silk Flake," "Mystic Velna," "Angoray," "Zephyr Paradise," "Silk-Wool," "Zephyr Tweed," "Two-Tone Zephyr Tweed," "Boucle," and "Heavy Tweed Velna."

The respondent has also misrepresented the nature of that part of his business known as "Tiger Yarn Company" by sending from his said principal place of business in the State of New York to customers and prospective customers located in States other than New York, letterheads bearing the words "Importers and Jobbers of Worsted Yarns, Angoras, Cotton," whereas in fact neither the respondent nor said Tiger Yarn Co. is now or ever has been an importer of worsted or other yarns, Angoras, cottons, or other fabrics.

PAR. 5. The use by the respondent 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 said statements and representations are true, and that respondent has truthfully represented the constituent fiber and material of which his products are made, as well as the nature of his business. On account of these erroneous beliefs a number of the consuming and purchasing public purchases a substantial volume of respondent's products.

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

Findings

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 5, 1941, issued and subsequently served its complaint in this proceeding upon respondent Benjamin Goldman, an individual trading as Tiger Yarn Co., Minnette Yarn Co., Bengo Yarn Shop, and Goldman's Yarn Shop, 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 the 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, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Benjamin Goldman, is an individual, trading as Tiger Yarn Co., Minnette Yarn Co., Bengo Yarn Shop, and Goldman's Yarn Shop, with his principal place of business located at 1643 Bathgate Avenue, The Bronx, 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 various grades and types of knitting yarn to members of the purchasing public, who buy directly or by mail orders, and to retail dealers in yarn. Respondent causes, and has caused, his said products, when sold, to be transported from his place of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States, and 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.

PAR. 3. In the course and conduct of the aforesaid business, and for the purpose of aiding and promoting the sale of his products, respond-

ent distributes to customers and prospective customers catalogues or color cards containing descriptions and samples of various knitting yarns offered for sale by him. The yarns, when sold, are labeled and the wording and descriptions on such labels correspond with the statements concerning each such yarn in the catalogue or color card.

Among the knitting yarns sold and distributed by respondent are certain ones the designation or description of which includes the word "tweed," such as "Heavy Tweed Velna." When applied to knitting yarns, the term "tweed" is understood by a substantial portion of the purchasing public to mean that the yarn is composed entirely of wool. Respondent, however, uses the term "tweed" to designate knitting yarns which are not composed of wool or which contain wool mixed with other fibers. The yarn designated and described by respondent as "Heavy Tweed Velna" is in fact composed of approximately 65 percent wool and 35 percent rayon.

Respondent uses the word "Shetland" in the designation or description of knitting yarns sold and distributed by him. One such yarn is designated and described as "Shetland Floss." The word "Shetland," and the term "Shetland Floss," when applied to yarn, is understood by a substantial portion of the purchasing public to mean yarn made from the wool of Shetland sheep grown on the Shetland Islands or on the contiguous mainland of Scotland. As a matter of fact, respondent's product to which this term is applied is made entirely of domestic wool.

One of the knitting yarns sold by respondent is designated and described as "Camel's Hair." This term, when applied to knitting yarns, is understood by a substantial portion of the purchasing public to mean yarn made from the hair of the camel. The product so designated by respondent is in fact made principally of wool and contains little, if any, camel's hair.

Another of the knitting yarns sold and distributed by respondent is designated and described as "Cashmere De Laine." The term "cashmere," as applied to knitting yarns, is understood by a substantial portion of the purchasing public to mean yarn made from the hair of the Cashmere goat. Respondent's product designated as "Cashmere De Laine" in fact contains fibers other than the hair of the Cashmere goat.

Another of the knitting yarns sold and distributed by respondent is designated and described as "Sport Angora." The term "angora," when applied to knitting yarns, is understood by a substantial portion of the purchasing public to mean yarn made from the hair of the Angora goat. The product so designated by respondent contains in fact approximately 80 percent wool and 20 percent rabbit hair.

In purchasing products represented as or purporting to be made of wool, or Shetland wool, or camel's hair, or hair of the Cashmere goat, or hair of the Angora goat, members of the public have a preference for the genuine article rather than a substitute for or simulation of the genuine article.

PAR. 4. Various of the yarns sold and distributed by respondent are misrepresented by him as being composed in part of silk. The term "silk" is understood by a substantial portion of the purchasing public to mean silk, the product of the cocoon of the silkworm. Among the yarns described by respondent as silk or containing silk are the following: A yarn represented to be "A fine silk and wool mixture of four-ply," which is in fact composed of approximately 80 percent wool and 20 percent rayon; a yarn described as "A fine mixture of silk and cotton," which is in fact composed of approximately 80 percent cotton and 20 percent rayon; a yarn designated as "Silk Flake" and described as "A cotton and silk combination," which is actually composed of approximately 80 percent cotton and 20 percent rayon; a yarn described as "A beautiful and lustrous mixture of silk and zephyr," which is in fact composed of approximately equal parts of rayon and wool; and a yarn described as "A very attractive yarn of silk and pure wool," which is in fact composed of approximately 55 percent rayon and 45 percent wool.

In addition to the false representations that certain yarns contain silk, respondent further misrepresents such yarns by failing to disclose that they are composed in part of rayon. Rayon used in yarn is a chemically manufactured fiber which can be so made as to closely simulate silk or wool. When manufactured to simulate silk it has the feel and appearance of silk and when manufactured to simulate wool it has the feel and appearance of wool. By reason of these qualities, rayon when manufactured to simulate silk or wool and not designated as rayon is practically indistinguishable from silk or wool, as the case may be, and the failure of respondent to disclose the rayon content of yarns containing that product has resulted in the purchase of such yarns by a substantial portion of the purchasing public under the erroneous impression that they were composed of the genuine products simulated.

One of the yarns sold and distributed by respondent is designated and described as "Crinkle Crepe." The term "crepe," when not accompanied by qualifying words, is understood by a substantial portion of the purchasing public to mean a product made of silk, the product of the cocoon of the silkworm. In fact the yarn designated by respondent as "Crinkle Crepe" is composed entirely of wool and rayon and contains no silk.

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PAR. 5. In the course and conduct of the business known as "Tiger Yarn Company" respondent has used on his letterheads the statement:

TIGER YARN CO.

Importers and Jobbers of

Worsted Yarns—Angoras—Cotton

Respondent thus represents that he is an importer and that he imports certain of the yarns offered for sale by him. Certain of such yarns are in fact represented as being made of or containing fibers which are not produced in this country and which are therefore imported from foreign countries. Respondent does not import any yarns or fibers from foreign countries and the representation that the Tiger Yarn Co. is an importer is false. There is a preference on the part of a substantial portion of the purchasing public for dealing direct with importers and for purchasing foreign products.

PAR. 6. The use by respondent of the aforesaid false and misleading representations, 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 mistaken and erroneous belief that said statements and representations are true, and as a result of such erroneous beliefs members of the purchasing and consuming public have purchased a substantial volume of respondent's products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of 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 brief filed by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

Order

It is ordered, That respondent, Benjamin Goldman, an individual, trading as Tiger Yarn Co., or Minnette Yarn Co., or Bengo Yarn Shop, or Goldman's Yarn Shop, or under any other name, his representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of knitting yarns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "tweed," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to 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.

2. Using the word "Shetland," or any simulation thereof, either alone or in connection or conjunction with any other word or words to designate, describe, or refer to any product which is not composed entirely of 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.

3. Using the term "Camel's Hair," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of hair of the camel: *Provided, however,* That in the case of a product composed in part of hair of the camel and in part of other fibers or material, such term 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.

4. Using the word "Cashmere," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of hair of the Cashmere goat: *Provided, however,* That in the case of a product composed in part of 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.

5. Using the word "Angora," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of hair of the Angora goat: *Provided, however,* That in the case of a product composed in part of 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.

6. Using the word "Silk," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any material which is not composed entirely of silk, the product of the cocoon of the silkworm: *Provided, however,* That in the case of a material composed in part of silk, the product of the cocoon of the silkworm, and in part of other fibers or materials, such word may be used as descriptive of the content which is silk, the product of the cocoon of the silkworm, 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.

7. Using the unqualified word "Crepe," or any other descriptive term indicative of silk, to designate, describe, or refer to any product which is not composed entirely of silk, the product of the cocoon of the silkworm: *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 accurately describing the fibers or materials from which such product is made.

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 such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

9. Using the word "Importer," or any other word or words of similar import and meaning, to designate, describe, or refer to respondent's business, or any portion thereof, or otherwise representing that respondent is an importer.

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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.

It is further ordered, That no provision of this order to cease and desist 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 rules and regulations promulgated thereunder.

IN THE MATTER OF
NATIONAL COIN CORPORATION AND JOHN ROMANO

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

Docket 3862. Complaint, July 29, 1939—Decision, Aug. 14, 1942

Where a corporation, subsequently dissolved, and the individual who was its president and principal owner, competitively engaged in the purchase of old and rare coins and in the interstate sale and distribution in said connection of a coin catalogue which they represented as describing all old and rare coins of value and the prices which they would pay therefor; in their advertisements in newspapers, periodicals and other publications, making possession of such catalogue a condition to such purchase—

- (a) Represented, directly or by implication, that all old coins were rare coins with values comparable to those of coins described or referred to therein, through mentioning only the old and rare coins of great value;

The facts being that only a small number of old coins are rare and highly valuable, and values and prices listed in their advertisements were greatly in excess of the usual values or selling prices of old coins; and

- (b) Represented that they would pay the prices listed in said advertisements for coins bearing the dates set forth therein without any other limitation, and that their said catalogue listed all known valuable coins;

The facts being their catalogue contained conditions and restrictions not set out by them in their advertisements: they did not pay the prices represented in their advertisements or, as illustrative, pay \$450 for all dimes dated prior to 1895, but paid it for only the "1894 Mint" dime; they required that prospective sellers post a \$1 appraisal fee to be returned only in event of their purchase of coin or coins in the amount of \$5 or more; their prices depended upon the state of preservation of coins in addition to the scarcity or dates thereof; and their catalogue did not list all known rare coins;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that said representations were true, thereby inducing it to purchase substantial number of said catalogues; whereby trade was unfairly diverted to them from competitors who did not misrepresent the conditions under which they purchased coins, and their coin catalogues, as consequence whereof, injury was done to competition:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Charles E. Booth, of Daytona Beach, Fla., 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

Complaint

Trade Commission having reason to believe that National Coin Corporation, a corporation, and John Romano, an individual, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Coin Corporation, 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 8 South Oleander Avenue, Daytona Beach, Fla. The respondent, John Romano, of the same address, is president and principal owner of said respondent 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 several years last past have been, engaged in the business of purchasing old and rare coins. In the conduct of said business, respondents sell and distribute a coin catalog which is represented by respondents to describe all old and rare coins of value and the prices which respondents pay for the same. Respondents cause said coin catalog, when sold, to be transported from their place of business in the State of Florida to purchasers thereof at their respective points of location in various States of the United States other than the State of Florida, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said coin catalog 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 are in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the purchase of old and rare coins 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 catalogs and other books or pamphlets describing the coins that they offer to purchase.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said coin catalog, respondents have caused statements and representations which purport to list the prices which respondents pay for said old and rare coins to be inserted in newspapers, periodicals, and other publications having a general circulation throughout the United States. In order to induce the purchase of respondents' said coin catalog, respondents state in such advertisements that they will purchase coins only from those persons having respondents' said coin catalog, and make false

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and misleading statements with respect to the values of old coins generally and the price that the respondent will pay for such old coins. Among and typical of the respondents' aforesaid advertisements are the following:

\$2,000 for 1¢. \$4,000 for \$1.00.

We pay up to \$10.00 each for 1909 cents.

BIG CASH PREMIUMS FOR HUNDREDS OF COINS NOW IN CIRCULATION.

Dimes before 1895.....	\$450.00
Liberty Head Nickels before 1914.....	300.00
Indian Cent '64-65.....	100.00
½ Cents.....	275.00
Large Copper Cent.....	2,000.00
Half Dimes.....	175.00
20¢ Piece.....	150.00
25¢ Piece.....	300.00
Silver Dollars.....	4,000.00
50¢ Piece.....	1,000.00
Trade Dollars.....	300.00
Gold Dollars.....	1,500.00
\$2.50 Gold Pieces.....	500.00
\$3.00 Gold Pieces.....	2,000.00
\$5.00 Gold Pieces.....	6,000.00
\$10.00 Gold Pieces.....	150.00
Colonial Coins.....	300.00
Foreign Coins.....	165.00
\$20.00 Gold Pieces.....	500.00
Commem. ½ Dollars.....	60.00

All foreign currencies.

Send 15¢ to-day for Coin Book * * * we do not accept your old coins from those who do not have our price book.

Old money. Coins wanted. 1909 cent \$10.00.

We buy all rare and old coins:

1933 50¢ \$4.00.

The following is also a typical advertisement used by respondents as aforesaid for the purpose of inducing the purchase of their said catalog:

Big prices paid for certain wanted coins. 1909 cent, \$10. Some silver dollars, \$4,000; 1864-1865 Indian head cents, \$100 each; dimes before 1895, \$600; Liberty head nickels before 1914, \$500; encased postage stamps; some large pennies, \$2,000; half-cents, \$275, paper money, gold dollars, \$1,500, foreign coins, \$165 some worth \$6,000 each. You may have coins for which we pay big premiums. Therefore, send 15¢ today for 1939 big, illustrated coin book for certain wanted coins. National Coin Corporation (80) Daytona Beach, Florida.

It is a fact that certain coins, because of their scarcity and age, are of high value and sell for exceedingly high prices among dealers and collectors of such coins. Such old and rare coins are generally, how-

ever, in the possession of dealers, collectors, museums or others engaged in collecting old and rare coins, and are not in possession of members of the purchasing public in any appreciable numbers.

The vast majority of old coins are not rare and especially valuable coins, and the value of said coins and the prices paid for them by dealers, collectors, and others are often merely nominal, and not in excess of the face value of said coins.

By mentioning only the old and rare coins of great value in its advertisements, in the manner aforesaid, respondents represent, directly and by implication, to members of the public that all old coins are rare coins with values comparable to the coins described or referred to in said advertisements. Said members of the general public do not know that only a comparatively small number of said old coins are rare and highly valuable. Consequently, many members of the purchasing public are misled and deceived into the false and erroneous belief that the high values and prices which respondents set out in their advertisements, as hereinbefore set forth, are representative of the values of old coins generally and the usual selling prices which respondents will pay for all old coins, when in truth and in fact said values and prices are greatly in excess of the usual values of old coins and greatly in excess of the usual selling prices of old coins. Respondents also represent that the prices listed in said advertisements will be paid by respondents for coins bearing the dates set forth in said advertisements without any other limitations or restrictions, and that respondents' coin catalog lists all known valuable coins. Relying upon such statements and representations, a substantial number of the purchasing public have purchased respondents' coin catalog.

PAR. 5. The coin catalog which respondents send to purchasers of the same contains a list of certain rare coins and the prices which respondents represent they will pay for such coins. Said coin catalog contains, with respect to the purchase of rare coins by the respondents, various conditions, restrictions, and limitations which are not set out by respondents in the aforesaid advertisements. In truth and in fact, respondents do not pay the prices for old coins which respondents represent they will pay in said advertisements, and upon which representations members of the public purchase respondents' catalog. For example, respondents represent in said advertisements that they will pay the sum of \$450 or other larger sums for all dimes bearing dates prior to the year 1895. Members of the public purchase respondents' catalog upon such representation, but find that respondents do not pay the sum of \$450 or other larger sums for all dimes bearing dates prior to the year 1895, but pay such sums for only one dime dated prior to the year 1895, which dime is a "1894 Mint" dime. The afore-

said advertisements by the respondents contain various other false and misleading statements and representations with respect to the prices which respondents pay for rare and old coins. Respondents' coin catalog does not list all known rare coins. Among other limitations and conditions which respondents place on their purchase of rare coins, and with respect to which prospective purchasers of said coin catalog are not advised, are:

Respondents require prospective sellers of coins to post with respondents a \$1 appraisal fee, which fee is returned by respondents only in the event of the purchase of respondents of a coin or coins in the amount of \$5 or more; and the prices which respondents pay for coins are dependent upon the state of preservation of the coins in addition to the scarcity or dates of the coins.

PAR. 6. The use by respondents of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and that respondents pay the prices listed in said advertisements for all rare coins bearing the respective dates listed therein, and into the purchase of a substantial number of respondents' coin catalogs because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondents from their said competitors who do not misrepresent the terms and conditions under which they purchase coins and sell their respective coin catalogs. In consequence thereof, 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. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 29, 1939, issued and subsequently served its complaint in this proceeding upon respondents National Coin Corporation, a corporation, and John Romano, an

individual, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced 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, and testimony and other evidence; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. National Coin Corporation, named as a respondent herein, was a corporation organized under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business at 8 South Oleander Avenue, Daytona Beach, Fla. Subsequent to the issuance of the complaint herein said corporation was dissolved and it is not now in existence. Respondent, John Romano, an individual, formerly of the same address, was president and principal owner of said respondent corporation and directed and controlled the sales policies and other activities of the said corporate respondent with respect to the acts and practices herein described. Respondent John Romano now owns and operates a curio shop located at 1004 Main Street, Daytona Beach, Fla.

PAR. 2. Respondents, for several years prior to July 1940, engaged in the business of purchasing old and rare coins. In the conduct of said business, respondents sold and distributed a coin catalog which was represented by respondents to describe all old and rare coins of value and the prices which respondents would pay for the same. Respondents caused said coin catalog, when sold, to be transported from their place of business in the State of Florida to purchasers thereof at their respective points of location in various States of the United States other than the State of Florida, and in the District of Columbia. Respondents maintained a course of trade in said coin catalog 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 were in substantial competition with other corporations

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Send 15¢ to-day for Coin Book * * * we do not accept your old coins from those who do not have our price book.

* * * * *
 Old money. Coins wanted. 1909 cent \$10.00.

* * * * *
 We buy all rare and old coins.

* * * * *
 1933 50¢ \$4.00.

The following is also a typical advertisement used by respondents as aforesaid for the purpose of inducing the purchase of their said catalog:

Big prices paid for certain wanted coins. 1909 cents, \$10. Some silver dollars \$4,000; 1864-1865 Indian head cents, \$100 each; dimes before 1895, \$600; Liberty head nickels before 1914, \$500; encased postage stamps; some large pennies, \$2,000; half-cents, \$275, paper money, gold dollars, \$1,500, foreign coins, \$165 some worth \$6,000 each. You may have coins for which we pay big premiums. Therefore, send 15¢ today for 1939 big, illustrated coin book for certain wanted coins. National Coin Corporation (80) Daytona Beach, Florida.

It is a fact that certain coins, because of their scarcity and age, are of high value and sell for exceedingly high prices among dealers and collectors of such coins. Such old and rare coins are generally, however, in the possession of dealers, collectors, museums, or others engaged in collecting old and rare coins, and are not in possession of members of the purchasing public in any appreciable numbers.

The vast majority of old coins are not rare and especially valuable coins, and the value of said coins and the prices paid for them by dealers, collectors, and others are often merely nominal, and not in excess of the face value of said coins.

By mentioning only the old and rare coins of great value in its advertisements, in the manner aforesaid, respondents represented, directly and by implication, to members of the public that all old coins are rare coins with values comparable to the coins described or referred to in said advertisements. Said members of the general public do not know that only a comparatively small number of said old coins are rare and highly valuable. Consequently, many members of the purchasing public were misled and deceived into the false and erroneous belief that the high values and prices which respondents set out in their advertisements, as hereinbefore set forth, are representative of the values of old coins generally and the usual selling prices which respondents would pay for all old coins, when in truth and in fact said values and prices are greatly in excess of the usual values of old coins and greatly in excess of the usual selling prices of old coins. Respondents also represented that the prices listed in said advertisements would be paid by respondents for coins bearing the dates set

forth in said advertisements without any other limitations or restrictions, and that respondents' coin catalog lists all known valuable coins. Relying upon such statements and representations, a substantial number of the purchasing public have purchased respondents' coin catalog.

PAR. 5. The coin catalog which respondents sent to purchasers of the same contained a list of certain rare coins and the prices which respondents represented they would pay for such coins. Said coin catalog contained, with respect to the purchase of rare coins by the respondents, various conditions, restrictions, and limitations which were not set out by respondents in the aforesaid advertisements. In truth and in fact, respondents did not pay the prices for old coins which respondents represented they would pay in said advertisements, and upon which representations members of the public purchased respondents' catalog. For example, respondents represented in said advertisements that they would pay the sum of \$450 or other larger sums for all dimes bearing dates prior to the year 1895. Members of the public purchased respondents' catalog upon such representations, but found that respondents did not pay the sum of \$450 or other larger sums for all dimes bearing dates prior to the year 1895, but paid such sums for only one dime dated prior to the year 1895 which dime is a "1894 Mint" dime. The aforesaid advertisements by the respondents contained various other false and misleading statements and representations with respect to the prices which respondents paid for rare and old coins. Respondents' coin catalog did not list all known rare coins. Among other limitations and conditions which respondents placed on their purchase of rare coins, and with respect to which prospective purchasers of said coin catalog were not advised, was the requirement that prospective sellers of coins post with respondents a \$1 appraisal fee, which fee was returned by respondents only in the event of the purchase by respondents of a coin or coins in the amount of \$5 or more, and the condition that the prices which respondents paid for coins were dependent upon the state of preservation of the coins in addition to the scarcity or dates of the coins.

PAR. 6. The use by respondents of the aforesaid false and misleading statements and representations had the capacity and tendency to, and did, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations were true, and that respondents paid the prices listed in said advertisements for all rare coins bearing the respective dates listed therein, and into the purchase of a substantial number of respondents' coin catalogs

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because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondents from their said competitors who do not misrepresent the terms and conditions under which they purchase coins and sell their respective coin catalogs. In consequence thereof, injury has been done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the aforesaid respondents, as herein found, were all to the prejudice and injury of the public and of respondents' competitors, and constituted unfair methods 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 testimony and other evidence in support of the allegations of said complaint taken before an examiner of the Commission therefore duly designated by it, 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, John Romano, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering to purchase and purchase of old and rare coins of the offering for sale, sale, and distribution of such coins and catalogs or other material describing same 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 all old coins are rare coins or have values comparable to the values or prices of rare coins.
2. That old coins generally have any value greatly in excess of their face value.
3. That the values of or prices which may be obtained for a very few rare coins are representative of the values or usual selling prices of old coins generally.

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4. That respondent will buy particular coins, or coins of certain kinds, at prices in excess of their face value, unless all conditions, limitations, or restrictions applicable to such purchases are clearly stated in conjunction therewith.

5. That respondent's coin catalogs list all known valuable coins.

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

It is further ordered, That, it appearing to the Commission that respondent National Coin Corporation has been dissolved and is not now in existence, this case be, and the same hereby is, closed as to said corporate respondent.

Syllabus

IN THE MATTER OF
CUTTER LABORATORIES

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

Docket 4348. Complaint, Oct. 12, 1940—Decision, Aug. 14, 1942

Where a corporation, engaged in manufacturing and compounding its "Blacklegol" vaccine for blackleg in cattle, and in competitive interstate sale and distribution thereof from its place of business at Berkeley, Calif., or from its depots and branch offices in various cities to distributors, druggists, and veterinarians; by means of advertisements in newspapers and periodicals, and by circulars, pamphlets and other advertising literature—

- (a) Represented that "Blacklegol" was the first preparation which combined the filtrate of cultural aggressin and the organisms of concentrated bacterin, and that by reason thereof it was 100 percent efficient in giving immunity to blackleg;

The facts being blackleg bacterin, which had been compounded and sold by it and its competitors for about 10 years prior to the advent of "Blacklegol" as such a combination, and "Blacklegol," in fact, was blackleg bacterin to which had been added aluminum hydroxide; its immunizing value, if any, over and above bacterin or concentrated bacterin (or bacterin from which the cultural aggressin or broth was removed) was dependent upon the addition of such chemical element; there is no vaccine preparation known to science which can be considered 100 percent effective in immunizing cattle against said infectious disease, it appearing that administration of any vaccine to cattle already infected has no value in preventing death, and the natural resistance of an animal being also a factor which may affect the immunizing value of any vaccine preparation; and

- (b) Made false and deceptive representations which unfairly disparaged its competitors' products through representing, as aforesaid, that until the advent of "Blacklegol" the combination of the filtrate of cultural aggressin and the organisms of concentrated bacterin had never been combined in a vaccine preparation, and that the efficiency of either, both of which were sold and distributed by its competitors, was equal to only 50 percent of its own said product in producing blackleg immunity in cattle;

The facts being that, as above noted, said filtrate and organisms had been combined in the vaccine blackleg bacterin for about 10 years prior to the advent of "Blacklegol"; and there was no scientific foundation for its representation that the efficiency of blackleg concentrated bacterin or blackleg cultural aggressin was equal to only 50 percent of that of its own preparation;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing it, because of such belief, to purchase substantial quantities of said vaccine in preference to that of 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, and constituted unfair methods of competition in commerce.

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As respects claim made in behalf of the manufacturer and seller of "Blacklegol"—a vaccine which was recommended by it for use as a means of rendering cattle immune to blackleg and, like blackleg bacterin, was a combination of the filtrate of cultural aggressin and the organisms of concentrated bacterin, with the addition of aluminum hydroxide—that concentrated bacterin and cultural aggressin are only 50 percent efficient in producing immunity to blackleg as compared with "Blacklegol": Conclusions reached from tests upon guinea pigs conducted with "Blacklegol" and with blackleg bacterin and certain blackleg vaccines sold and distributed by competitors, including at least one concentrated bacterin preparation (i. e., from which the cultural aggressin had been removed), did not warrant or substantiate claim of said manufacturer and seller.

Before *Mr. Randolph Preston, Mr. Edward E. Reardon and Mr. John J. Keenan*, trial examiners.

Mr. Floyd O. Collins, Mr. Merle P. Lyon, Mr. Charles S. Cox and Mr. Robt. N. McMillen for the Commission.

Boyken, Mohler & Beckley and Mr. Robert H. Eckhoff, 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 Cutter Laboratories, 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, Cutter Laboratories, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, and having its principal office and place of business at Fourth and Parker Streets, Berkeley, Calif., and with depots and branch offices at Los Angeles, Calif., Chicago, Ill., San Antonio, Tex., Seattle, Wash., Denver, Colo., Fort Worth, Tex., El Paso, Tex., Boise, Idaho, New Orleans, La., and other places.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, compounding, advertising, and selling a certain vaccine preparation containing drugs, described by it as "Blacklegol," and recommended by it for use as a means of rendering cattle immune to an ailment known as "Blackleg." Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in Berkeley, Calif., or from other points of location of respondent's depots or branch offices, to purchasers thereof located in the various States of the United States other than the

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States in which are located the points of origin of the shipments. Respondent's said "Blacklegol" is sold to distributors, druggists, and veterinarians who in turn resell the same to the retail trade and other members of the purchasing public. Respondent at all times mentioned herein, has maintained a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

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

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly, or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails; by advertisements in newspapers and periodicals, and by circulars, pamphlets, catalogs, and other advertising literature, are the following:

Blacklegol 100% efficient.

Blacklegol—the first 100% efficient blackleg vaccine ever produced.

Blacklegol gives life immunity with one shot regardless of age.

With the advent of Blacklegol, a double vaccination became unnecessary, even on the worst blackleg infected land.

Cattlemen * * * have found out by experience that they can vaccinate their Spring calves once with this improved vaccine and then forget about blackleg.

BLACKLEGOL regardless of age, one 5 c. c. dose protects for life!

Blacklegol is not an aggressin nor bacterin. It is a blackleg vaccine entirely different from any other blackleg vaccine ever marketed; and is the first vaccine to ever be definitely and unconditionally recommended for the one dose immunization of suckling calves.

Not a single calf has died of blackleg following immunization with Blacklegol * * * A statement which truthfully cannot be made about any other type of blackleg vaccine. ONE DOSE LIFE IMMUNITY IN SUCKLING CALVES.

Blacklegol—a vaccine so potent that not a single calf has died of blackleg following immunization at any age with Blacklegol.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondent has represented that said preparation is 100 percent effective; and that the immunization effect from the use of said preparation is invariably unailing or permanent.

PAR. 6. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact respondent's preparation is not 100 percent effective; said preparation is neither invariably unailing nor permanent; and there have been deaths from blackleg of animals treated with respondent's said preparation.

PAR. 7. In the manner aforesaid the respondent has made numerous unfair and disparaging statements concerning preparations of competitors which are designed, intended and used for the same purposes as respondent's said preparation. Typical of the unfair and disparaging representations so made by the respondent are the following:

The superiority of Blacklegol can best be understood by comparing it with two well-known present day products—Concentrated Bacterin, and Cultural Ag-gressin (Filtrate). * * * In each case we refer to ours as well as any other good bacterin or aggressin.

Cultural Aggressin 50% efficient.

Concentrated Bacterin 50% efficient.

* * * BLACKLEGOL is more potent than other types of vaccine—. This is because a chemical contained only in Blacklegol holds the vaccine in the animal's tissues until even the last drop has been used to produce immunity. Insist on Blacklegol—guaranteed to produce a greater immunity than any bacterin or aggressin ever marketed.

If you could measure vaccine potency it would look like this * * * Blackleg Pills * would scarcely fill the bottom of the cup; Aggressin * not more than a quarter full; Bacterin * about two-thirds; Blacklegol to overflowing. * In each case we refer to ours as well as any other good bacterin, aggressin or pills. (Appearing underneath are pictures of four glass measuring cups indicating the respective quantities referred to above, with the names "Blackleg Pills", "Ag-gressin", "Bacterin" and "Blacklegol" respectively appearing under said cups.)

Progressive cattlemen will not be held to the old less potent, less reliable products such as bacterin and aggressin any more than they will put up with the Model T "just as good" in place of the V-8.

* * * Blacklegol is so cultured that both organisms and supernatant are highly antigenic, thus producing a vaccine compared to which concentrated bacterin and cultural aggressin are only 50% efficient.

PAR. 8. Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondent has misleadingly and unfairly disparaged "bacterin" and "aggressin" preparations of competitors by publishing the false assertion that immunity obtainable from said competitive preparations is only one-half that of respondent's said preparation; that said preparation assures immunity even to the last drop of said prep-

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aration after the same is injected into the animal's tissues and that competitors' preparations do not produce such immunity.

PAR. 9. The foregoing false, misleading, and disparaging representations as hereinabove set forth are exaggerated, misleading, and untrue. In truth and in fact there is no scientific basis for respondent's claim that competitive preparations, "aggressin" and "bacterin," are only 50 percent efficient or that respondent's said preparation produces as immunity double that of said competitive preparations; nor is there scientific basis for respondent's claim that its said preparation produces immunity to the last drop when injected into the animal's tissues, and that competitors' preparations do not produce such immunity.

PAR. 10. The use by respondent of the foregoing false, disparaging, deceptive, and misleading statements and representations with respect to this preparation disseminated as aforesaid, has had and now has the capacity and tendency to and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase substantial quantities of respondent's vaccine in preference to that of competitors. As a result thereof injury has been done and is now being done by respondent to competitors and 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 respondent, as herein alleged, are all to the prejudice of the public and respondent's competitors, and constitute unfair and deceptive acts and practices in commerce, and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 12, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Cutter Laboratories, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of the complaint were introduced by Floyd O. Collins, Merle P. Lyon, and Charles S. Cox, attorneys for the Commission, and in opposition to the allegations of the complaint by W. Bruce

Beckley and Robert H. Eckhoff, attorneys for the respondent, before Randolph Preston, Edward E. Reardon, and J. J. Keenan, 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 complaint, the 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 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, Cutter Laboratories, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California and having its principal office and place of business at Fourth and Parker Streets, Berkeley, Calif., and with depots and branch offices at Los Angeles, Calif.; Chicago, Ill.; San Antonio, Tex.; Seattle, Wash.; Denver, Colo.; Ft. Worth, Tex.; El Paso, Tex.; Boise, Idaho; New Orleans, La.; and other places.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, compounding, and selling, among other products, a certain vaccine preparation designated "Blacklegol" and recommended by it for use as a means of rendering cattle immune to an ailment known as blackleg. Respondent causes said preparation, when sold, to be transported from its place of business in Berkeley, Calif., or from other points of location of respondent's depots or branch offices, to purchasers thereof located in various States of the United States other than the States in which are located the points of origin of such shipments. Respondent's said Blacklegol is sold to distributors, druggists, and veterinarians, who in turn resell the same to the retail trade and to other members of the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and for several years last past has been, in substantial competition with other corporations and with individuals, firms, and partner-

ships engaged in the sale and distribution of blackleg vaccines 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, for the purpose of inducing the purchase of its product Blacklegol, respondent has disseminated false, deceptive, misleading, and disparaging statements and representations with reference to said product, by means of advertisements inserted in newspapers and periodicals and by circulars, pamphlets, and other advertising literature. Among and typical of such false, deceptive, misleading, and disparaging representations are the following:

1. That respondent's preparation Blacklegol is 100 percent efficient in giving immunity to the disease of blackleg.
2. That the efficiency of certain other vaccine preparations known as blackleg concentrated bacterin and blackleg cultural aggressin is equal to only 50 percent of that of Blacklegol in producing immunity from the disease of blackleg.

PAR. 5. Blackleg is an infectious disease caused by a microbe which is found in the soil of certain localities and is one of the most prevalent and widespread of the infectious diseases of cattle. The organisms causing blackleg live in the ground and enter the body with feed, water, and through wounds in the skin. The infection is very acute and runs a very short course, usually with fatal results. The characteristic lesions in blackleg are swelling in one or more quarters and when the skin is removed from the swollen area, the tissue underneath the skin is swollen, contains gas, and is dark in color. The disease is of such short duration that the infection in an animal is usually not discovered until after death has occurred. The procedure followed in those areas where blackleg infection is prevalent is to vaccinate the animals before weaning or before exposure to infection.

There have been a number of vaccine preparations developed in an effort to combat this disease, the first of which was blackleg vaccine, developed around 1890, consisting of powdered muscle tissue from animals which had died from blackleg and which contained the organisms of blackleg in a spore form. This vaccine had the effect of giving the animal a mild case of blackleg, to which it could establish natural immunity, but was rather dangerous to use as it might produce death from blackleg if too great a quantity were given or if the resistance of the animal to blackleg was below normal.

The next form of blackleg vaccine was a product known as blackleg natural aggressin, made from the tissue of animals which had died of blackleg. The juices were pressed out of the muscle tissue and sterilized by filtration and administered hypodermically under the skin.

The next product developed was known as blackleg cultural aggressin or filtrate, which was made by growing blackleg organisms in a suitable broth, from which the organisms were filtered out, leaving the filtrate, which was injected under the skin.

The next step was the production of blackleg bacterin, in which the blackleg organism was grown in broth and sterilized by the addition of chemicals, and both the broth and the organisms were injected. There have been modifications of the bacterin, such as concentration and improvements in growth methods. Concentrated bacterin is the blackleg bacterin from which the broth has been removed, leaving the blackleg organisms.

Blackleg vaccine, blackleg cultural aggressin, and blackleg bacterin, both whole and concentrated, are sold by the respondent and by many of its competitors.

In 1934 the respondent developed a vaccine which it designated "Blacklegol," which was also known as "Blackleg Antigen," and, more recently, as "Blackleg Bacterin, aluminum hydroxide adsorbed." This product is identical with blackleg bacterin, with the exception that aluminum hydroxide has been added, which has the effect of causing the vaccine to be absorbed by the cells of the tissue in smaller amounts, in a sort of delayed process similar to the effect produced by a succession of small doses over a period of time.

In the use of the vaccines, blackleg cultural aggressin, and blackleg bacterin, it was customary in badly infested areas to give two separate injections of the vaccine, the first before the weaning period and the second after the weaning period, although in cases where injection was given after weaning period, one injection was usually considered to be sufficient to establish immunity, particularly in the case of blackleg bacterin. In the case of Blacklegol, the respondent recommended only one vaccination because of the adsorption effect produced by the aluminum hydroxide.

PAR. 6. In connection with the representation that its preparation Blacklegol is 100 percent efficient in giving immunity to the disease of blackleg, the respondent has issued statements and representations in advertisements and periodicals and in pamphlets, of which the following is a typical example:

Guaranteed to Produce a Greater Immunity than Any Bacterin or Aggressin Ever Developed.*

The superiority of Blacklegol can best be understood by comparing it with two well-known present day products—Concentrated Bacterin, and Cultural Aggressin (Filtrate).*

Cultural Aggressin is made by growing blackleg organisms in a broth-like medium (bacteria food) and then filtering the organisms out, leaving the filtrate, which after further processing is called Cultural Aggressin (or Filtrate) and used as a vaccine.

* In each case we refer to ours as well as any other good bacterin or aggressin.

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Concentrated Bacterin is made by much the same process—up to a certain point! Blackleg organisms are grown in a broth-like medium. Then the organisms are separated from the Cultural Aggressin; but in this case it is the Cultural Aggressin which is thrown out, while the organisms and the small amount of fluid remaining are further processed, called Concentrated Bacterin, and used as a vaccine.

To repeat!—the Cultural Aggressin is thrown away to make Concentrated Bacterin, and the Concentrated Bacterin is thrown away to make Cultural Aggressin! (Note illustrations on the left.)

It seems silly doesn't it? But it isn't, or at least it wasn't until the introduction of Blacklegol! The difficulty lay in the fact that scientists knew how to culture blackleg organisms so that either the organisms or the filtrate would be fairly high in immunizing value, but never both at the same time.

The answer to that problem took years to work out. Hundreds of experiments were made, in which thousands of laboratory animals were used. A small fortune was expended, but the answer was worth it as it brought forth Blacklegol—the first 100% efficient blackleg vaccine ever produced.

Have you ever heard of a case of blackleg following Blacklegol?

It's possible; in fact, our laboratory examination proved it did happen in one case, and it may have in others, although we were able to trace the presence of the blackleg organism in only this one of the dozen odd reports of losses which have come in during the past three years. Accept these dozen odd as actual losses and with the millions of calves successfully vaccinated with Blacklegol, mathematically you still have more chance of winning the Irish Sweepstakes than you have of losing a calf from blackleg if you vaccinate with Blacklegol!

By means of the statements hereinabove set forth and others similar thereto not specifically mentioned herein, the respondent represents that Blacklegol is the first preparation which has combined the filtrate of cultural aggressin and the organisms of concentrated bacterin, and that, by reason of this combination, Blacklegol is 100 percent efficient in giving immunity to the disease of blackleg. In truth and in fact, Blacklegol is not the first vaccine preparation which has combined the filtrate of cultural aggressin and the organisms of concentrated bacterin, but, instead, this combination is the method by which blackleg bacterin is made. Blackleg bacterin had been compounded and sold by the respondent and by respondent's competitors for approximately ten years prior to the advent of Blacklegol, and Blacklegol is, in fact, blackleg bacterin to which has been added aluminum hydroxide, and its immunizing value, if any, over and above bacterin or concentrated bacterin is dependent upon the addition of the above chemical element. There is no vaccine preparation known to science today which can be considered to be 100 percent efficient or effective in the immunizing of cattle against the infectious disease of blackleg. The administration of any vaccine preparation to cattle already infected with the blackleg organism has no value in preventing death from the disease. Furthermore, the natural re-

sistance of the animal, or lack of such natural resistance, is a factor which may affect the immunizing value of Blacklegol or any other vaccine preparation.

PAR. 7. In connection with the representation by the respondent that efficiency of certain other vaccine preparations known as blackleg concentrated bacterin and blackleg cultural aggressin is equal to only 50 percent of that of Blacklegol in producing immunity in cattle to the disease of blackleg, the respondent has issued false and deceptive statements and representations in advertisements and periodicals and in pamphlets, which unfairly disparage products sold and distributed by its competitors, of which the following is a typical example:

The reason for the superiority of Blacklegol over the older types of blackleg vaccines is twofold FIRST: It is produced in such a way that both the organisms and their by-products of growth are high in immunizing value. Hitherto scientists knew how to culture the blackleg organism so that the organisms themselves would be high in immunizing value (concentrated bacterin); or so that the supernatant fluid containing the by-products of growth (cultural aggressin) would be high in immunizing value; but were unable to make cultures in which both would have high protective value. This problem was solved by Cutter research bacteriologists. * * * Blacklegol is so cultured that both organisms and supernatant fluid are highly antigenic, thus producing a vaccine compared to which concentrated bacterin and cultural aggressin are only 50% efficient.

By means of the statements hereinabove set forth and others similar thereto not specifically mentioned herein, the respondent represents that until the advent of Blacklegol the combination of the filtrate of cultural aggressin and the organisms of concentrated bacterin had never been combined in a vaccine preparation, and that the efficiency of blackleg concentrated bacterin and blackleg cultural aggressin, both of which are sold and distributed by respondent's competitors, is equal to only 50 percent of that of Blacklegol in producing immunity in cattle to the disease of blackleg. In truth and in fact, the filtrate of cultural aggressin and the organisms of concentrated bacterin had been combined in the making of the vaccine blackleg bacterin for approximately ten years prior to the advent of Blacklegol. There is no scientific foundation for the representation that the efficiency of blackleg concentrated bacterin or blackleg cultural aggressin is equal to only 50 percent of that of respondent's preparation Blacklegol in producing immunity to the disease of blackleg, either because of the combination of the filtrate of cultural aggressin with the organisms of concentrated bacterin or because of the inclusion of the chemical element aluminum hydroxide in respondent's preparation.

Certain tests upon guinea pigs were conducted with respondent's preparations Blacklegol and blackleg bacterin and certain blackleg vaccines sold and distributed by respondent's competitors, including

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at least one concentrated bacterin preparation. While some greater efficiency is claimed for Blacklegol in certain lower level or minimum dosages as a result of these tests, the conclusions reached do not warrant or substantiate respondent's claim that concentrated bacterin or cultural aggressin are only 50 percent efficient in producing immunity to blackleg as compared with Blacklegol. In fact the nature of the tests conducted does not warrant the claim of any definite percentage of immunizing value for Blacklegol over and above competitors' products so far as field dosage is concerned in the actual administration of these products.

PAR. 8. The use by the respondent of the foregoing false, deceptive, misleading, and disparaging statements and representations with respect to its preparation, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's vaccine in preference to that of its competitors. As a result, trade has been diverted unfairly to the respondent from its competitors who are engaged in the sale and distribution of various blackleg vaccines in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondent as herein found are 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 on the complaint of the Commission, answer of the respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto, briefs filed 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 the respondent, Cutter Laboratories, a corporation, its officers, representatives, agents, and employees, directly or

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through any corporate or other device, in connection with the offering for sale, sale, and distribution of its vaccine preparation now designated "Blacklegol" or "Blackleg Bacterin Aluminum Hydroxide Adsorbed" or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing in any manner, either directly or by implication, that respondent's preparation Blacklegol is 100 percent efficient or 100 percent effective in giving immunity to the disease of blackleg.

(2) The use of statements or representations which unfairly disparage vaccines sold and distributed by respondent's competitors or which represent, either directly or by implication, that the efficiency or effectiveness of blackleg concentrated bacterin or blackleg cultural aggressin is equal to only 50 percent of that of respondent's preparation Blacklegol in providing immunity to the disease of blackleg.

(3) The use of any specific percentage to designate the immunizing value of respondent's preparation Blacklegol or its comparative immunizing value with other preparations unless such percentage is based upon controlled experiments sufficient to definitely establish the percentage value claimed.

(4) The use of the terms "100 percent efficient" or "50 percent efficient," or any other percentage or comparative percentage, in describing manufacturing procedure or production wastes, in such a way as to imply that such percentages apply to immunizing effectiveness.

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

LOUIS A. WALTON CO., KLING BROS. & CO., INC., LEOPOLD
KLING AND SAMUEL KLING

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

Docket 4528. Complaint, June 30, 1941—Decision, Aug. 14, 1942

- Where a corporation, which was the wholly owned selling subsidiary of a second corporate concern; said parent corporation and 2 brothers, who were officers of the 2 and together owned about 38,000 of the 50,000 shares outstanding of the latter; engaged, directly and through 8 other corporations, which, likewise thus controlled, were carried on, essentially, as one enterprise, in the manufacture and interstate sale and distribution of suits, topcoats, and overcoats, both direct to individual consumers and to retail dealers—
- (a) Made use of such designations and descriptions, on labels attached to samples of materials used in carrying on the business of corporation first referred to, as "Blue-Green Alpaca-Mohair Knit Back," "Camel Hair and Wool Blend," and "Silver Grey Mohair-Camel-Wool Blend" when such materials contained none of the hair of the alpaca or of the camel;
 - (b) Made use, as aforesaid, of descriptions and designations "Mohair and Wool Knit Back Overcoating—Green" and "Oxford Mohair-Wool Blend Topper" for materials which, respectively, had a cotton knit back and contained no mohair;
 - (c) Made use, as aforesaid, of descriptions "Green Shadow Stripe—12½ oz. Pure Worsted. Silk decoration" for materials in which the decoration was rayon or some fiber other than silk, the product of the cocoon of the silk-worm;
 - (d) Falsely represented a domestic product as imported through attaching to samples of a material made in this country label reading "Imported Corona Brown Wool—Crisp Spun Homespun";
 - (e) Made use of term "The House of Wool Fabrics" on letterheads and in advertising, together with such statements as "Every Fabric is Guaranteed All Wool—Qualities you can only find in lines selling at \$35.00 and \$40.00. This we can prove. * * * A guarantee goes with every garment"; when in fact certain of said garments were not composed entirely of wool, and in some instances contained substantial percentages of cotton, rayon, or other fibers; and
 - (f) Failed to disclose the fact that substantial percentages of cotton and some rayon were contained in materials sold, through use, as typical, of such terms as "Oxford-Mohair Wool Blend Topper," to describe materials of wool, rayon, and cotton fibers, whereby as a result of failure to disclose such content of cotton or rayon (which, when manufactured to simulate silk or wool, is practically indistinguishable by the purchasing public from the one or the other), a substantial portion of the purchasing public was led to believe that the materials in question were composed entirely of wool;

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With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that said representations 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.

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

Mr. Donovan Divet for the Commission.

D'Ancona, Pflaum, Wyatt, Marwick & Riskind, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Louis A. Walton Co., a corporation, Kling Bros. & Co., Inc., a corporation, Leopold Kling and Samuel Kling, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kling Bros. & Co., Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 333-339 West Van Buren Street, in the city of Chicago, State of Illinois.

Respondent, Louis A. Walton Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 407 South Market Street, in the city of Chicago, State of Illinois. It is a wholly owned and controlled subsidiary of respondent, Kling Bros. & Co., Inc., and is operated as a department of that company.

Respondent, Leopold Kling, is an individual, and is president of the corporate respondents, Louis A. Walton Co. and Kling Bros. & Co., Inc., respectively.

Respondent, Samuel Kling, is an individual, and is vice president of the corporate respondent Louis A. Walton Co. and vice president and treasurer of the corporate respondent, Kling Bros. & Co., Inc., respectively.

Respondents, Samuel Kling and Leopold Kling, individually, and as officers of respondent corporations, manage, control, and dominate the affairs and activities of said corporations with respect to the acts and practices herein set forth. Said individual respondents have their offices and place of business at 333-339 West Van Buren Street, in the city of Chicago, State of Illinois.

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PAR. 2. Respondents are now, and for more than 5 years last past, have been engaged in the sale and distribution of men's suits and clothing made to individual measurements. Respondents cause said products when sold to be transported from their places of business in the State of Illinois, to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents maintain and at all times mentioned herein, have maintained a substantial course of trade in said products, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their businesses in connection with the offering for sale, sale, and distribution of their products, in commerce, and for the purpose of inducing the purchase thereof by the public, respondents have caused various false, misleading, and deceptive statements and representations, descriptive of their businesses and the place of origin and the constituent fibers of their materials, to be printed on labels attached to samples of materials, and inserted in sales magazines, price lists, advertising placards and on letterheads which they have distributed among sales agents, customers and prospective customers located in the various States of the United States and in the District of Columbia.

PAR. 4. Among and typical of such false and misleading descriptions and designations used on labels attached to samples of respondents' materials are the following:

"Blue-Green Alpaca—Mohair Knit Back" for material which contains none of the hair of the alpaca.

"Camel Hair and Wool Blend." "Silver Gray Mohair—Camel Wool Blend" for materials which contain none of the hair of the camel.

"Mohair and Wool Knit Back Overcoating—Green" for materials which have a knit back made of cotton.

"Oxford Mohair—Wool Blend Topper" for materials which contain no mohair.

"Green Shadow Stripe * * * pure worsted-silk decoration" for materials in which the decoration is rayon or some fiber other than silk, the product of the cocoon of the silkworm.

PAR. 5. Respondents have likewise misrepresented the place of origin of their fabrics by misrepresenting domestic products to be imported. Among and typical of such misrepresentations used on labels attached to samples of respondents' materials is the following:

"IMPORTED Corona Brown Wool Crisp Spun Homespun" for fabrics that are not imported, but to the contrary are manufactured in the United States.

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PAR. 6. Respondents have made further false and misleading statements with respect to their businesses and the kind and type of fabrics which they sell; the letterheads and advertising mentioned herein contain the following wording:

The House of Wool Fabrics.

Every Fabric Is Guaranteed All Wool—Qualities You Can Only Find in Lines Selling at \$35.00 and \$40.00. This We Can Prove. * * * A Guarantee Goes With Every Garment.

In truth and in fact the fabrics used by respondents in manufacturing men's suits and clothing are not composed entirely of wool but in many instances contain substantial percentages of cotton, rayon and other fibers.

PAR. 7. Respondents further misrepresent the materials of which some of their men's suits and clothing are manufactured in that they fail to disclose that substantial percentages of cotton and rayon are found therein. Among and typical of such misrepresentations used on labels attached to samples of respondent's material is the following:

"Oxford Mohair—Wool Blend Topper" for material composed of wool, rayon and cotton fibers.

Substantial quantities of cotton and rayon fibers may be combined with wool in such a manner that the cotton and rayon content is practically indistinguishable by the purchasing public from the wool and when cotton or rayon and wool fibers are so combined, and no disclosure is made as to the cotton or rayon content, the purchasing public is thereby led to believe that said materials are composed entirely of wool.

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 and feel 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. Products made of rayon which simulate silk or wool in appearance are accepted by the purchasing public as silk or wool where no disclosure is made that the products are actually made of rayon.

The word silk has had for many years and still has in the minds of the purchasing public, a definite and specific meaning, to wit, the product of the cocoon of the silkworm.

PAR. 8. The false and misleading statements and representations set forth herein, used by the respondents in connection with their

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businesses 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 respondents to induce the purchase of their merchandise.

PAR. 9. The use by the respondents of the aforesaid acts and practices has had and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true and on account of this erroneous and mistaken belief so induced by respondents, the purchasing and consuming public has purchased 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 June 30, 1941, issued and subsequently served its complaint in this proceeding upon respondents, Louis A. Walton Co., a corporation, Kling Bros. & Co., Inc., a corporation, and Leopold Kling and Samuel Kling, individually, and as officers of the corporate respondents, 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 answers by certain of respondents, testimony and other evidence in support of and in opposition to the allegations of the 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, answers thereto, testimony and other evidence, report of the trial examiner 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 full advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Louis A. Walton 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 407 South Market Street, Chicago, Ill. It is a wholly owned and controlled subsidiary of respondent, Kling Brothers & Company, Inc., and is operated as a selling agency of that company.

Respondent, Kling Bros. & 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 at 333-339 West Van Buren Street, Chicago, Ill.

Respondent, Leopold Kling, is an individual, and is president of each of the corporate respondents.

Respondent, Samuel Kling, is an individual, and is vice president of respondent, Louis A. Walton Co., and is vice president and treasurer of respondent, Kling Bros. & Co., Inc.

PAR. 2. The corporate respondents directly, and the individual respondents acting through the corporate respondents and other agencies, are now, and for many years last past have been, engaged in the manufacture, sale, and distribution of suits, topcoats, and overcoats, distributing such products both directly to individual consumers and indirectly through sales to retail dealers in such products.

Kling Bros. & Co., Inc., has two manufacturing subsidiaries, William Bradford Co., located at Davenport, Iowa, and Ed V. Price & Co., located at respondent's place of business in Chicago, both engaged in the manufacture of suits, topcoats, and overcoats. Kling Bros. & Co., Inc., has a number of subsidiaries in addition to respondent Louis A. Walton Co., including Whitney Tailoring Co., Chesterfield Tailoring Co (which is presently inactive), and Leeds Tailors. The Ed V. Price Co. also has subsidiaries, including Lamm & Co., A. E. Anderson Co. (which is presently inactive), and Murphy Bros. William Bradford Co. manufactures the garments sold by all the Kling Bros. & Co., Inc., subsidiaries, except Ed V. Price & Co., which does its own manufacturing. The subsidiaries of Kling Bros. & Co., Inc., other than the Bradford and Price companies are merely sales organizations engaged in the distribution of garments manufactured as aforesaid. With the exception of the Price company, which has its own sales organization, the sales of these subsidiaries are under the direction of the same general sales manager.

The parent company, Kling Bros. & Co., Inc., has outstanding 50,000 shares of capital stock, of which respondent Leopold Kling owns approximately 21,000, and his brother, respondent, Samuel Kling, owns approximately 17,000 shares. Leopold Kling directs the manufacturing and selling operations carried on by Kling Bros. & Co., Inc., through its several subsidiaries, and Samuel Kling directs the financial, property, and office affairs of the several companies. To-

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gether the individual respondents control, dominate, and direct the business of Kling Bros. & Co., Inc., and its several subsidiary and affiliated corporations, and the Commission concludes that the business of these several corporations is carried on as essentially one enterprise in which the various corporations are in substance merely departments.

PAR. 3. In the course and conduct of the aforesaid business respondents have caused, and cause, their products, when sold, to be transported from their places of business to purchasers thereof at their respective points of location in various States of the United States other than the State in which the shipments originate and in the District of Columbia, and respondents maintain, and have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business, in connection with the offering for sale, sale, and distribution of their products in commerce and for the purpose of inducing the purchase thereof by members of the public, the respondents have caused various statements and representations descriptive of their business and of the constituent fibers in their products and the place of origin thereof to be printed on labels attached to samples of such materials, inserted in sales magazines, price lists, advertising placards, and on letterheads which they have distributed among sales agents, customers, and prospective customers located in various States of the United States and in the District of Columbia.

Among the descriptions and designations on labels attached to samples of materials used in carrying on the business of respondent Louis A. Walton Co. during the fall season of 1939-40 were the following: "Blue-Green Alpaca-Mohair Knit Back" to designate and describe a material which contained none of the hair of the alpaca; "Camel Hair and Wool Blend" and "Silver Grey Mohair-Camel-Wool Blend" to designate and describe materials which contained none of the hair of the camel; "Mohair and Wool Knit Back Overcoating—Green" to designate and describe materials which had a knit back made of cotton; "Oxford Mohair-Wool Blend Topper" to designate and describe materials which contained no mohair; and "Green Shadow Stripe—13½ Oz. Pure Worsted. Silk Decoration" for materials in which the decoration was rayon or some fiber other than silk, the product of the cocoon of the silkworm.

PAR. 5. In the conduct of the business of respondent Louis A. Walton Co., during approximately the same period of time, respondents falsely represented the place of origin of fabrics offered for sale and sold. A label reading "IMPORTED Corona Brown Wool—Cris-

"Spun Homespun" was attached to samples of a particular material which was not imported from any foreign country but which, on the contrary, was manufactured in this country. Respondents thus falsely represented a domestic product as an imported one.

PAR. 6. Respondents, in carrying on the business of Louis A. Walton Co., also made statements with respect to the business of that respondent and the kind and type of fabrics sold by it. The letterheads and advertising of said respondent contained the following:

THE HOUSE OF WOOL FABRICS

and

Every Fabric Is Guaranteed All Wool—Qualities you can only find in lines selling at \$35.00 and \$40.00. This we can prove. * * * A guarantee goes with every garment.

In truth and in fact certain of the fabrics offered for sale and sold by the Louis A. Walton Co. were not composed entirely of wool, and in some instances contained substantial percentages of cotton, rayon, or other fibers.

PAR. 7. Respondents, in carrying on the business of Louis A. Walton Co., also failed to disclose the fact that substantial percentages of cotton and some rayon were contained in materials sold. For example, the term "Oxford Mohair-Wool Blend Topper" was used to describe material composed of wool, rayon, and cotton fibers. Substantial quantities of cotton or rayon fibers may be combined with wool in such a manner that the cotton or rayon content is practically indistinguishable by the purchasing public from wool; and when cotton or rayon and wool fibers are so combined and no disclosure made as to the cotton or rayon content, a substantial portion of the purchasing public is thereby led to believe that said materials are composed entirely of wool.

PAR. 8. Rayon used in the production of cloth is a chemically manufactured fiber which may be so processed 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 and feel 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. Where no disclosure is made of rayon content of products which simulate silk or wool in appearance, such products are accepted by a substantial portion of the purchasing public as silk or wool. The word "silk" has had for many years, and still has, in the minds of the purchasing public a definite and specific meaning; namely, the product of the cocoon of the silkworm.

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PAR. 9. The use by respondents of the aforesaid acts and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true, and on account of this erroneous and mistaken belief so induced by respondents the purchasing and consuming public has purchased a substantial volume of respondents' products.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade 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 respondents, 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 briefs filed in support of and in opposition to said 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 respondents, Louis A. Walton Co., a corporation, and Kling Bros. & Co., Inc., a corporation, their officers, representatives, agents, and employees, and respondents Leopold Kling and Samuel Kling, individually, and as officers of respondents Louis A. Walton Co., and Kling Bros. & Co., Inc., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of fabrics or articles of clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Alpaca," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of the hair of the alpaca: *Provided, however*, That in the case of a product composed in part of the hair of the alpaca and in part of other fibers or materials, such word may be used as descriptive of the alpaca 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.

2. Using the term "Camel Hair," or any other word or words of similar import and meaning, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of the hair of the camel: *Provided, however,* That in the case of a product composed in part of the hair of the camel and in part of other fibers or materials, such term 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 designating such other constituent fibers or materials.

3. Using the word "Wool," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to 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 the constituent fibers or materials of such product.

4. Using the word "Mohair," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of 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 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 "Silk," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any material which is not composed entirely of silk, the product of the cocoon of the silkworm: *Provided, however,* That in the case of material composed in part of silk the product of the cocoon of the silkworm, and in part of other fibers or materials, such word 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 such other constituent fibers or materials.

6. Representing by the use of the word "Imported," or in any manner whatsoever, that fabrics or garments of domestic manufacture are imported from any foreign country.

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7. Using the term "The House of Wool Fabrics," or any other words or terms of similar import or meaning, to designate, describe, or refer to any business which includes the offering for sale and sale of fabrics which are not composed entirely of wool or garments made from such fabrics.

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 such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

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 no provision of this order to cease and desist 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 rules and regulations promulgated thereunder.

IN THE MATTER OF
PAT V. JAMES, TRADING AS THE N-A COMPANY

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

Docket 4662. Complaint, Dec. 30, 1941—Decision, Aug. 14, 1942

Where an individual, engaged in the interstate sale and distribution of his "N-A No. 7," "Vicine," "Nature's Aid" or "N-A" medicinal preparation; by advertisements disseminated through the mails, by radio broadcasts and otherwise, directly and by implication—

- (a) Represented that his said product was a powerful germicide and antiseptic, was unequalled in stopping bleeding, and was a cure for athlete's foot and eczema;

The facts being that, when used externally, its therapeutic properties were limited to those of a mild astringent and mild antiseptic; used as an astringent, it would not arrest venous or arterial hemorrhages; its only value in the treatment of such conditions as athlete's foot or eczema was limited to giving temporary relief to itching and irritation; and it was not suitable to use on denuded skin surfaces where it might cause permanent disfigurement by the deposition of iron in the form of pigmentation; and

- (b) Represented that said preparation was a splendid iron tonic, and that use thereof would prevent lockjaw and blood poisoning; and that it was an effective treatment for indigestion, sour stomach, ptomaine poisoning, rheumatism, and kidney disorders;

The facts being that while it might supply some iron, it was not a splendid iron tonic, since its iron content was not in a form readily utilizable by the body; it would not prevent lockjaw or blood poisoning; and was of no substantial therapeutic value for the treatment of ailments above set forth or any disease;

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 said preparation because of such belief;

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Cecil F. Travis, of Jackson, Miss., 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 Pat V. James, an individual, trading as The N-A 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

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

PARAGRAPH 1. Respondent, Pat V. James, is an individual, trading as The N-A Co., with his principal place of business located in the city of Laurel, State of Mississippi.

PAR. 2. Respondent is now, and for several years last past, has been engaged in the sale and distribution of a medicinal preparation known variously as "N-A No. 7," "Vicine," "Nature's Aid," and "N-A." Respondent causes and has caused his said preparation, when sold, to be transported from his said place of business in the State of Mississippi to purchasers thereof located in States of the United States other than the State of Mississippi, and in the District of Columbia.

Respondent maintains, and at all the times herein mentioned 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 his aforesaid business, the respondent has disseminated, and has caused 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 has caused the dissemination of, false advertisements concerning his said preparation, by various means, for the purpose of inducing, and which are likely to induce directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by radio broadcasts, and by other means, are the following:

N-A No. 7 or Nature's Aid is a powerful, non-poisonous germicidal antiseptic. It actually kills germs without injury to the body tissue internally or externally. * * * You'll find that N-A No. 7 is a powerful antiseptic that destroys germs and relieves soreness like magic.

It is unequalled in stopping the flow of blood. There's nothing quite like N-A No. 7 for stopping the flow of blood.

* * * We carry N-A No. 7 in our first-aid kit for cuts, burns and bruises.

It is also a splendid natural iron tonic.

As an antiseptic, N-A No. 7 is insurance against blood poison and lockjaw. It kills the germs and prevents bloodpoisoning.

We'd like to read you a letter received by the N-A Company from Mr. Charles Herring of Bridgewater, Virginia. Mr. Herring writes: "While at Saratoga, New York, my friend, Mr. Bernard Jones, gave me a bottle of Nature's Aid and advised me to try it for a bad case of Athlete's Foot, from which I had been

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suffering for some time and gotten only temporary relief from any prescribed treatment. To my great satisfaction and relief, N-A No. 7, Nature's Aid, completely cured the trouble."

I wish I had the power to convince every one of you today of the true wisdom in always having available N-A No. 7, Nature's Aid. Its natural corrective and healing properties are so many and varied it sounds almost unbelievable. But they are true.

It's invaluable in the treatment of indigestion, sour stomach, ptomaine poison, rheumatism and kidney disorders.

PAR. 4. By 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 and does represent, directly and by implication, that his said preparation, designated and advertised variously as "N-A No. 7," "Vicine," "Nature's Aid," and "N-A," is a powerful germicide and a powerful antiseptic; that it is a splendid iron tonic; that it is unequalled in stopping bleeding; that its use will prevent lockjaw and blood poisoning; that it is a cure for athlete's foot and eczema; and that it is an effective treatment for indigestion, sour stomach, ptomaine poisoning, rheumatism, and kidney disorders.

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 a powerful germicide, or a powerful antiseptic. The therapeutic properties of said preparation, when used externally, are limited to those of a mild astringent and a mild antiseptic. When used as an astringent it will not arrest venous or arterial hemorrhages. It is not an effective treatment for athlete's foot or eczema, its only value in the treatment of such disease or condition being that of giving temporary relief to itching and irritation. When used on denuded skin surfaces it may cause permanent disfigurement by the deposition of iron in the form of pigmentation. Said preparation is not suitable for use in cases involving skin conditions where the surface cells are impaired or absent.

In truth and in fact, although said preparation might supply some iron for the body, it is not a splendid iron tonic, the iron in said preparation not being in a form which is readily utilized by the body. Said preparation will not prevent lockjaw, or blood poisoning, nor is it an effective treatment for indigestion, sour stomach, ptomaine poisoning, rheumatism, or kidney disorders. Furthermore, said preparation is of no substantial therapeutic value as an internal medicine for the treatment of any disease or condition of the body.

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PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to the therapeutic value of his 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 statements, representations, and advertisements are true, and induces a portion of the purchasing public because of such erroneous and mistaken belief to purchase 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 December 30, 1941, issued and on January 2, 1942, served its complaint in this proceeding upon respondent, Pat V. James, an individual, trading as The N-A Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Pat V. James, is an individual, trading as The N-A Co., with his principal place of business located in the city of Laurel, State of Mississippi.

PAR. 2. Respondent is now, and for several years last past, has been engaged in the sale and distribution of a medicinal preparation

known variously as "N-A No. 7," "Vicine," "Nature's Aid," and "N-A." Respondent causes and has caused his said preparation, when sold, to be transported from his said place of business in the State of Mississippi to purchasers thereof located in States of the United States other than the State of Mississippi, and in the District of Columbia.

Respondent maintains, and at all the time herein mentioned 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 his aforesaid business, the respondent disseminated and caused 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 also disseminated and caused the dissemination of false advertisements concerning his said preparation, by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by radio broadcasts, and by other means, are the following:

N-A No. 7 or Nature's Aid is a powerful, non-poisonous germicidal antiseptic. It actually kills germs without injury to the body tissue internally or externally. * * * You'll find that N-A No. 7 is a powerful antiseptic that destroys germs and relieves soreness like magic.

It is unequalled in stopping the flow of blood. There's nothing quite like N-A No. 7 for stopping the flow of blood.

* * * We carry N-A No. 7 in our first-aid kit for cuts, burns and bruises.

It is also a splendid natural iron tonic.

As an antiseptic, N-A No. 7 is insurance against blood poison and lockjaw. It kills the germs and prevents blood poisoning.

We'd like to read you a letter received by the N-A Company from Mr. Charles Herring of Bridgewater, Virginia. Mr. Herring writes: "While at Saratoga, New York, my friend, Mr. Bernard Jones, gave me a bottle of Nature's Aid and advised me to try it for a bad case of Athlete's Foot, from which I had been suffering for some time and gotten only temporary relief from any prescribed treatment. To my great satisfaction and relief, N-A No. 7, Nature's Aid, completely cured the trouble".

I wish I had the power to convince every one of you today of the true wisdom in always having available N-A No. 7, Nature's Aid. Its natural corrective and healing properties are so many and varied it sounds almost unbelievable. But they are true.

It's invaluable in the treatment of indigestion, sour stomach, ptomaine poison, rheumatism and kidney disorders.

Findings

PAR. 4. By 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 his said preparation, designated and advertised variously as "N-A No. 7," "Vicine," "Nature's Aid," and "N-A," is a powerful germicide and a powerful antiseptic; that it is a splendid iron tonic; that it is unequalled in stopping bleeding; that its use will prevent lockjaw and blood poisoning; that it is a cure for athlete's foot and eczema; and that it is an effective treatment for indigestion, sour stomach, ptomaine poisoning, rheumatism, and kidney disorders.

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 a powerful germicide or a powerful antiseptic. The therapeutic properties of said preparation, when used externally, are limited to those of a mild astringent and a mild antiseptic. When used as an astringent it will not arrest venous or arterial hemorrhages. It is not an effective treatment for athlete's foot or eczema, its only value in the treatment of such diseases or conditions being that of giving temporary relief to itching and irritation. When used on denuded skin surfaces it may cause permanent disfigurement by the deposition of iron in the form of pigmentation. Said preparation is not suitable for use in cases involving skin conditions where the surface cells are impaired or absent.

In truth and in fact, although said preparation might supply some iron for the body, it is not a splendid iron tonic, the iron in said preparation not being in a form which is readily utilized by the body. Said preparation will not prevent lockjaw, or blood poisoning, nor is it an effective treatment for indigestion, sour stomach, ptomaine poisoning, rheumatism, or kidney disorders. Furthermore, said preparation is of no substantial therapeutic value as an internal medicine for the treatment of any disease or condition of the body.

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 therapeutic value of his said preparation has had 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, representations and advertisements are true, and has in-

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duced a portion of the purchasing public because of such erroneous and mistaken 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 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, Pat V. James, individually and trading as The N-A Co., or trading under any other name, his agents, servants, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's medicinal preparation now designated variously by the names "N-A No. 7," "Vicine," "Nature's Aid" and "N-A," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under those names or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

That said medicinal preparation is a powerful germicide or a powerful antiseptic, or is other than a mild astringent and a mild antiseptic; that it is unequalled in stopping bleeding or will arrest venous or arterial hemorrhages; that it is a cure for athlete's foot or eczema, or that it has any value in the treatment of such diseases or conditions other than to give relief from the itching and irritation thereof; that it is a splendid iron tonic; that its use will prevent lockjaw or blood poisoning; that it is an effective treatment for indigestion, sour stomach, ptomaine poisoning, rheumatism, or kidney disorders; or

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that it has any substantial therapeutic value as an internal medicine for the treatment of any disease or condition of the body.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal 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.

Complaint

35 F. T. C.

IN THE MATTER OF

LEWIS BLOCK, FRANK BLOCK, MAC GOLDBERG, OTTO LANGER, MORRIS BLOCK, AND DORA BLOCK, TRADING AS STYLE & MERIT BUYING SERVICE

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

Docket 4249. Complaint, Aug. 21, 1940—Decision, Aug. 17, 1942

Where six partners, who engaged in New York City in soliciting the business of purchasing, free of charge, the merchandise requirements of retail organizations in New York and other States, contacting a large number of manufacturers of ladies' and children's ready-to-wear, leather goods and accessories, furs, and fur coats in New York, Pennsylvania, and other eastern States, and searching the market in order to obtain at the lowest possible prices the exact merchandise ordered by retail buyer-clients—

Received, from competitive sellers, manufacturers, and wholesalers of fur garments for many retail fur outlets of client-buyers upon purchases made for their said buyer-clients, brokerage fees which amounted to from 2 to 5 percent of the price of the merchandise, while acting in fact for or in behalf of or under the direct or indirect control of such buyers and as their buying representatives:

Held, That such receipt of compensation in the form of commission on purchases from competitive sellers constituted a violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. A. W. DeBirny and *Mr. Edward S. Ragsdale* for the Commission.

Mr. Alfred McCormack, *Mr. Harmon Duncombe* and *Mr. Douglas L. Hatch*, of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, are copartners, doing business under the firm name of Style & Merit Buying Service, and have their office and place of business at 225 West Thirty-fourth Street, New York, N. Y.

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Articles of Copartnership are duly recorded and said firm name duly registered under the laws of the State of New York. Said Articles state the purpose of the formation of said copartnership to be:

To conduct the business of buying and purchasing any and all commodities of whatsoever nature for the benefit of any and all accounts, organizations, associations, manufacturers, department and retail stores, and other organizations of a similar nature on a commission basis.

Said respondents will hereinafter be referred to as copartners respondent.

PAR. 2. Since January of 1939 said copartners respondent have solicited the business of purchasing free of charge the merchandise requirements of a number of retail stores and organizations located in New York State and other States and have advertised to the trade generally a performance by them of complete buying service. As a result of such solicitation and advertising a number of persons, firms, and corporations owning and operating retail stores have engaged copartners respondent to purchase their requirements for them from various manufacturers and sellers thereof. No such purchases are ever made by copartners respondent until and unless requisitions or orders for specific merchandise are received from said buyer clients of copartners respondent. After the receipt of such orders or requisitions it is the consistent practice of copartners respondent to then search the market and contact various manufacturers and sellers in order to obtain the exact merchandise so ordered by said buyers and at the lowest possible prices. The sellers and manufacturers so contacted by copartners respondent comprise a large number of persons, firms, and corporations engaged in the manufacture and sale of ladies' and children's ready-to-wear, leather goods, and accessories, furs and fur coats, and are located in the States of New York and Pennsylvania and other States in the eastern part of the United States.

PAR. 3. Said sellers and manufacturers are engaged in the sale and distribution in commerce of the various merchandise hereinabove described to the buyers represented by copartners respondent and to other customers located in New York State and other States and, pursuant to purchases made by copartners respondent for their buyer clients, merchandise is shipped and caused to be transported by such sellers and manufacturers from their respective factories and places of business into and through the State of New York and into and through the various States of the United States to said buyers and to their competitors.

PAR. 4. Since January of 1939 said copartners respondent have purchased in interstate commerce in excess of \$1,000,000 yearly merchandise for, and rendered buying services to, the said buyer clients and

upon the purchases so made brokerage fees or commissions of 2 to 5 percent of the price of such merchandise, amounting in the aggregate to more than \$16,000 per annum, have been charged and transmitted to and received by said copartners respondent from various sellers and manufacturers. In some instances said brokerage fees or commissions are remitted direct to copartners respondent by sellers of said merchandise and in other instances said brokerage fees or commissions are deducted by said buyer clients from the sales price of such merchandise and are remitted by said buyer clients to said copartners respondent. A substantial part of said brokerage fees and commissions has been used by said copartners respondent to defray the expenses of and pay bills for some of their said buyer clients.

PAR. 5. In all of said purchasing transactions hereinabove described and referred to in connection with which the brokerage fees or commissions have been paid, and are paid and transmitted by the said sellers and manufacturers to, and have been and are accepted and received by, said copartners respondent, said copartners respondent have been and are agents acting in fact for and in behalf of their said buyer clients and were and are generally rendering to such buyer clients all of the buying services required by them and customarily rendered by a buying agent to and for his principals.

PAR. 6. The transmission and payment of the brokerage fees and commissions by the various sellers and manufacturers to, and the receipt and acceptance thereof by, said copartners respondent in the manner and in the circumstances hereinabove set forth, is in violation of the provisions of Section 2(c) of the above mentioned Act of Congress, as amended (U. S. C., Title 15, Sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provision of an act of Congress, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (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 21, 1940, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondents' answer, the Commission entered its order granting respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and

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further hearings as to said facts. The respondents have also waived oral argument and the filing of briefs.

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 same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, are copartners doing business under the firm name of Style & Merit Buying Service, and have their office and place of business at 225 West Thirty-fourth Street, New York, N. Y.

Articles of Copartnership are duly recorded and said firm name duly registered under the laws of the State of New York. Said Articles state the purpose of the formation of said copartnership to be:

To conduct the business of buying and purchasing any and all commodities of whatsoever nature for the benefit of any and all accounts, organizations, associations, manufacturers, department and retail stores, and other organizations of a similar nature on a commission basis.

Said respondents will hereinafter be referred to as copartners respondent.

PAR. 2. Since January of 1939 said copartners respondent have solicited the business of purchasing free of charge the merchandise requirements of a number of retail stores and organizations located in New York State and other States and have advertised to the trade generally a performance by them of complete buying service. As a result of such solicitation and advertising a number of persons, firms, and corporations owning and operating retail stores have engaged copartners respondent to purchase their requirements for them from various manufacturers and sellers thereof. No such purchases are ever made by copartners respondent until and unless requisitions or orders for specific merchandise are received from said buyer clients of copartners respondent. After the receipt of such orders or requisitions it is the consistent practice of copartners respondent to then search the market and contact various manufacturers and sellers in order to obtain the exact merchandise so ordered by said buyers and at the lowest possible prices. The sellers and manufacturers so contacted by copartners respondent comprise a large number of persons, firms, and corporations engaged in the manufacture and sale of ladies' and children's ready-to-wear, leather goods, and accessories, furs and

fur coats, and are located in the States of New York and Pennsylvania and other States in the eastern part of the United States.

PAR. 3. Said sellers and manufacturers are engaged in the sale and distribution in commerce of the various merchandise hereinabove described to the buyers represented by copartners respondent and to other customers located in New York State and other States and, pursuant to purchases made by copartners respondent for their buyer clients, merchandise is shipped and caused to be transported by such sellers and manufacturers from their respective factories and places of business into and through the State of New York and into and through the various States of the United States to said buyers and to their competitors.

PAR. 4. Since January of 1939 said copartners respondent have purchased in interstate commerce in excess of \$1,000,000 yearly merchandise for, and rendered buying services to, the said buyer clients and upon the purchases so made brokerage fees or commissions of 2 to 5 percent of the price of such merchandise, amounting in the aggregate to more than \$16,000 per annum, have been charged and transmitted to and received by said copartners respondent from various sellers and manufacturers. In some instances said brokerage fees or commissions are remitted direct to copartners respondent by sellers of said merchandise and in other instances said brokerage fees or commissions are deducted by said buyer clients from the sales price of such merchandise and are remitted by said buyer clients to said copartners respondent. A substantial part of said brokerage fees and commissions has been used by said copartners respondent to defray the expenses of and pay bills for some of their said buyer clients.

PAR. 5. In all of said purchasing transactions hereinabove described and referred to in connection with which the brokerage fees or commissions have been paid, and are paid and transmitted by the said sellers and manufacturers to, and have been and are accepted and received by, said copartners respondent, said copartners respondent have been and are agents acting in fact for and in behalf of their said buyer clients and were and are generally rendering to such buyer clients all of the buying services required by them and customarily rendered by a buying agent to and for his principals.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondents, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, copartners, doing business under the firm name Style &

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Merit Buying Service individually and as copartners, are engaged in business in commerce as agents, buying representatives, or other intermediaries in connection with the buying, from representative competitive sellers, manufacturers, and wholesalers of fur garments for many retail fur outlets or client buyers and have acted in fact for, or in behalf of, or under the direct or indirect control of such buyers in purchasing fur garments from said representative competitive sellers, manufacturers, and wholesalers, and that in the course of such commerce and while acting in fact as agents, buying representatives or other intermediaries in connection with the buying of fur garments or other commodities for such purchasers did receive remuneration in the form of commissions or otherwise from such representative competitive sellers, manufacturers and wholesalers from whom respondents purchased such fur garments for such retail fur outlets or client buyers in violation of the provisions of subsection (c) of Section 2 of "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).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondents, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, copartners, doing business under the firm name Style & Merit Buying Service, individually and as copartners, which answer admits all of the material allegations of the complaint to be true and waives all other intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion herein that said respondents, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, copartners, doing business under the firm name Style & Merit Buying Service, individually and as copartners, have violated the provisions of "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 the respondents, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, copartners, doing business under the firm name Style & Merit Buying Service, individually and as copartners, or under any other name, jointly or severally, their agents, employees, and representatives, directly or

through any corporate or other device, in or in connection with the purchasing of furs, fur garments, or other commodities in commerce, as commerce is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission or other compensation, or any allowance or discount in lieu thereof from any seller on or in connection with purchases made from such seller (a) when such purchases are made for respondents' own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such purchases respondents are acting in fact for or in behalf or are subject to the direct or indirect control, of the purchaser.

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

Syllabus

IN THE MATTER OF

J. FREIDSON SHOE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4632. Complaint, Nov. 13, 1941—Decision, Aug. 18, 1942

Where a corporation, engaged at wholesale in the interstate sale and distribution of shoes, particularly children's shoes—

- (a) Stamped "Dr. Chase's Cushion Comfort" on the soles of said line of shoes, and in 1939 added a period to the die so that the designation, while modified to read "D. R. Chase's Cushion Comfort," had appearance of the original due to the impossibility of discerning separation between the "D" and "R";
 - (b) Furnished to the manufacturer labels which were attached to the lining of certain of its said shoes bearing the unaltered original designation;
 - (c) Set forth said original designation on heel pads of certain shoes and, beginning in 1939 modified it to "D Chases Health Shoes";
 - (d) Set forth prior to 1939 on boxes enclosing said children's shoes aforesaid original designation and such statements as "Dr. Chase's Health Shoes—Designed and built for growing feet," "Dr. Chase's Shoes are scientifically designed with wide treads, narrow heels, and sturdy, flexible soles that will develop your children's foot muscles as Nature dictates," "Genuine Dr. Chase's shoes carry the diamond trade-mark. Look for it"; and subsequent to 1939 modified said designation to "The Chase's Cushion Comfort" and said statements to "Chase's Health Shoes designed and built for growing feet," "Chase's Cushion Comfort Shoes are scientifically designed," etc., and "Genuine Chase's Cushion Comfort Shoes carry the diamond trade-mark. Look for it," referring, through aforesaid invitation "to look for" said trade-mark, to the imprints on soles and lining label above referred to; and
 - (e) Made use in its catalogues of illustrations of its said shoes which frequently showed label "Dr. Chase's" notwithstanding frequent reference thereto in said catalogues as "D. R. Chase's"; and made use of original designation "Dr. Chase's Cushion Comfort" on invoices and letterheads;
- Notwithstanding fact shoes thus marked, labeled, designated, and described were not designed or approved by any doctor or orthopedic specialist, nor was their design or construction supervised or approved by any such person; they had no special health or orthopedic features, but were made precisely as were shoes of similar grade and quality made by the manufacturer for its other customers;
- With the result of placing in the hands of dealers an instrumentality whereby they might mislead and deceive the purchasing public with respect to the design and corrective features of said products; and with capacity and tendency to divert business from those who do not mark, label, designate, and describe their shoes in such manner, and to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, whereby it was induced to purchase substantial quantities of said shoes:

Complaint

35 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.

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

Mr. J. R. Phillips, Jr., and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Albert E. Steinem and *Mr. Herbert J. Jacobi*, of Washington, D. C., and *Nathanson & Rudofsky*, of Boston, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that J. Freidson Shoe 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, J. Freidson Shoe Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 200 Essex Street, Boston, Mass. Said respondent is now, and since its incorporation in 1924 has been, engaged as a wholesaler and jobber of shoes. Respondent causes its said product, when sold by it, to be transported from its place of business in Boston, Mass., to purchasers thereof located in various States of the United States other than the point of origin of the shipments. Respondent sells its product branded and labeled as hereafter described 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 said product in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its said business and for the purpose of inducing the purchase of its shoes, the respondent variously designates such shoes as follows:

"DR. CHASE'S CUSHION COMFORT," "DR. CHASE'S HEALTH SHOES," "D. CHASE'S HEALTH SHOES," "D. R. CHASE'S CUSHION COMFORT," "DR. CHASE."

The aforesaid designations of such shoes appear extensively in circulars, pamphlets, catalogs, and letterheads disseminated by the respondent to customers and prospective customers. The aforesaid designations are also stamped on respondent's shoes and on the boxes

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in which such shoes are packed. In addition, display cards furnished to dealers for advertising purpose carry the same designations of respondent's shoes.

Through the use of the foregoing statements and representations, respondent represents or implies that its shoes are manufactured, fashioned, or designed under the supervision of a doctor technically educated and skilled in the care and treatment of the feet, and that they contain special, scientific or orthopedic features for the purpose of correcting or alleviating foot troubles or weaknesses not found generally in other modern footwear.

PAR. 3. The said statements and representations are grossly exaggerated, false and misleading. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised, and sold as described herein are not made in accordance with the design or under the supervision of a doctor technically educated and skilled in the care and treatment of the feet. Such footwear does not contain any special, scientific or orthopedic features for the purpose of correcting or alleviating foot troubles or weaknesses not generally common to other modern footwear.

PAR. 4. The practices of the respondent as above alleged places in the hands of dealers an instrumentality whereby such dealers may mislead and deceive the purchasing public with respect to the design and correction features of said product.

PAR. 5. The use by the respondent of the foregoing false and misleading designations for its shoes 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 said statements and representations are true and that such shoes are manufactured, fashioned, or designed under the supervision of a doctor technically educated and skilled in the care and treatment of the feet and that such shoes contain special, scientific, or orthopedic features not found generally in other modern footwear. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 13, 1941, issued and

subsequently served its complaint in this proceeding upon respondent J. Freidson Shoe Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of the 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 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 makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. Freidson Shoe Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 200 Essex Street, Boston, Mass. Respondent is now, and for a number of years last past has been, engaged in the sale and distribution at wholesale of shoes, particularly children's shoes.

PAR. 2. In the course and conduct of the aforesaid business, respondent causes its shoes, when sold, to be transported from its place of business in Massachusetts to purchasers at their various points of location in States of the United States, other than the point of origin of the shipments, and has maintained a course of trade in said shoes in commerce among and between various States of the United States.

PAR. 3. For the purpose of inducing purchase of its shoes, respondent, J. Freidson Shoe Co., causes certain representations to be made in catalogs distributed by it and on the boxes or containers in which its shoes are packaged for sale to the public, and causes to be placed upon the shoes certain labels, stamps, and markings. Said statements, labels, stamps, and markings represent and imply that the shoes offered for sale and sold by respondent are designed, fashioned, and manufactured under the supervision of a doctor skilled in the care and treatment of the feet, and that such shoes are "health" shoes containing special orthopedic features for the correction and

alleviation of foot troubles or weaknesses, which special features are not present in the shoes generally offered for sale to the public.

The line of children's shoes sold by respondent was known and designated for a number of years as "DR. CHASE'S CUSHION COMFORT." Beginning in 1939 and subsequent thereto, respondent made certain modifications in some of its uses of the said brand name. It is respondent's present practice to have stamped into the soles of its shoes numerous repetitions of the mark:

D. R. CHASE'S CUSHION COMFORT

Prior to 1939 these markings read "DR. CHASE'S CUSHION COMFORT." In 1939 a period between the "D" and the "R" in the aforesaid designation was added to the die used in so marking its shoes. It is substantially impossible, however, to tell from an examination of the markings on the soles of respondent's shoes made from such die that there is any separation between the "D" and "R," and these letters appear to form the abbreviation for the word "Doctor."

There is a label attached to the lining of certain shoes in respondent's said line of children's shoes, which label is furnished by respondent to the manufacturer and which bears the following inscription:

DR. CHASE'S CUSHION COMFORT

Prior to 1939 the heel pads in certain shoes in said line of children's shoes sold by respondent bore the imprint:

DR. CHASE'S HEALTH SHOES

In 1939 the die used to make the imprint was changed by striking the letter "R" from the designation "DR." and since that time the heel pads have been marked:

D CHASES HEALTH SHOES

Prior to 1939 the boxes in which respondent's line of children's shoes were packaged for sale to the public carried the following inscription on the tops thereof:

DR. CHASE'S CUSHION COMFORT
Trade Mark

Dr. Chase's health shoes
Designed and built for growing feet.

Carefree Feet

Dr. Chase's Shoes are scientifically designed with wide treads, narrow heels, and sturdy flexible soles that will develop your child's foot muscles as Nature dictates.

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Dr. Chase's Shoes are made in all sizes and widths to assure proper fitting; very essential for comfort and wear.

Genuine Dr. Chase's Shoes carry the diamond trade-mark. Look for it.

CRADLE TO COLLEGE

Since 1939 the boxes used for packaging respondent's said shoes have had the following inscription upon the tops thereof:

THE CHASE'S CUSHION COMFORT
Trade Mark

Chase's health shoes
Designed and built for growing feet.

Carefree Feet

Chase's Cushion Comfort Shoes are scientifically designed with wide treads narrow heels, and sturdy flexible soles that will develop your child's foot muscles as Nature dictates.

Chase's Cushion Comfort Shoes are made in all sizes and widths to assure proper fitting; very essential for comfort wear.

Genuine Chase's Cushion Comfort Shoes carry the diamond trade-mark. Look for it.

CRADLE TO COLLEGE

The direction contained in this inscription reading, "Genuine Chase's Cushion Comfort Shoes carry the diamond trade-mark. Look for it" refers to the above-mentioned imprints on the soles of such shoes and the labels attached to the linings thereof.

The catalogs distributed by respondent to purchasers and prospective purchasers of its shoes frequently refer to its shoes as "D. R. Chase's," but the illustrations of shoes appearing in said catalog frequently show the label "Dr. Chase's." Respondent's invoices of said shoes to purchasers thereof bear on the heading thereof the inscription:

DR. CHASE'S CUSHION COMFORT

and respondent's letterheads also bear the same inscription.

PAR. 4. Many of the shoes sold by respondent which are marked, labeled, designated, described, and referred to in the manner set forth in the preceding paragraph, are manufactured for respondent by the Ephrata Shoe Co., of Ephrata, Pa. In fact, for a number of years respondent has purchased approximately 5,000 pairs of such shoes monthly from the Ephrata Shoe Co. The shoes so purchased were not, and are not, designed or approved by any doctor or orthopedic specialist, nor is their design or construction supervised or approved by any doctor or orthopedic specialist. Such shoes do not have any special "health" features or any orthopedic features intended to correct or alleviate foot troubles or weaknesses. On the contrary, the shoes so

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purchased are manufactured in precisely the same manner and according to the same designs as are shoes of similar grade and quality manufactured by the Ephrata Shoe Co. for its other customers and, except for the markings and designations placed thereon at the direction of respondent, do not differ in any material respect from shoes sold to other purchasers by the Ephrata Shoe Co. for which no claims of health or orthopedic value are made. In fact, they are substantially the same as shoes of similar quality made by other manufacturers and ordinarily and generally offered to members of the purchasing public who do not wish or seek shoes having special features for the correction or alleviation of foot troubles.

PAR. 5. The acts and practices of respondent in marking, labeling, designating, and describing its shoes in the manner set out above place in the hands of dealers an instrumentality whereby they may mislead and deceive the purchasing public with respect to the design and corrective feature of such shoes, and have the capacity and tendency to divert business from those who do not mark, label, designate, and describe their shoes in such manner.

The use by respondent of the aforesaid false and misleading designations for its shoes has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said statements and representations are true and that such shoes are manufactured, fashioned, or designed under the supervision of a doctor technically educated and skilled in the care and treatment of the feet and contain special scientific or orthopedic features not generally found in other footwear. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase substantial quantities of respondent's shoes.

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, 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 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 J. Freidson Shoe 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 shoes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Doctor," or the abbreviation "Dr.," or any colorable simulation thereof, to designate, describe, or refer to shoes not designed or approved by a doctor; or otherwise representing, directly or by implication in any manner, that shoes not designed or approved by a doctor have been so designed or approved or have special features which are the result of medical advice;

2. Using the word "Health," or any other word or words of similar import or meaning, to designate, describe, or refer to shoes which have no special scientific or orthopedic features; or otherwise representing, directly or by implication, that shoes of customary and usual construction have special health or corrective features.

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

MORETRENCH CORPORATION

MODIFIED CEASE AND DESIST ORDER

Docket 3262. August 25, 1942.

Modified order, pursuant to provisions of Sec. 5 (1) of Federal Trade Commission Act, and in accordance with decree below referred to in proceeding in question, in which original order issued on Feb. 6, 1939, 28 F. T. C. 297, and in which Circuit Court of Appeals for Second Circuit on May 4, 1942, in *Moretrench Corporation v. Federal Trade Commission*, 127 F. (2d) 792, 34 F. T. C. 1849, rendered its opinion and on May 21, 1942, issued its decree modifying aforesaid order of the Commission and affirming the same as so modified—

Requiring respondent, its officers, etc., in connection with offer, etc., in interstate commerce, or in the District of Columbia, of wellpoints and wellpoint systems, to cease and desist from (1) misrepresenting the amount of unobstructed water-passing screen area of a competitive wellpoint, as there set forth; (2) representing that wellpoints made by its competitors have only a limited use as jetting points, etc., or are otherwise inefficient, etc., as therein stated; (3) representing that one of its wellpoints is equal or superior to five of any other wellpoints; (4) representing that its wellpoints never clog up; and (5) representing that contractors all over the world testify that operating costs of its system are always 50 percent or any other constant percentage lower than those of competitive wellpoint systems.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on February 6, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondent had violated certain provisions of the Federal Trade Commission Act and thereupon issued and caused to be served on the respondent its order requiring respondent to cease and desist from such violations; and it further appearing that on April 6, 1939, the respondent filed with the United States Circuit Court of Appeals for the Second Circuit its petition to review and set aside said order to cease and desist, and that on May 4, 1942, the United States Circuit Court of Appeals for the Second Circuit rendered its opinion and on May 21, 1942, issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order as so modified.

Now, therefore, Pursuant to the provisions of subsection (i) of Section 5 of the Federal Trade Commission Act, the Commission

issues this, its modified order to cease and desist in conformity with said decree:

It is ordered, That the respondent, Moretrench 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 wellpoints and wellpoint systems in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Misrepresenting the amount of unobstructed water-passing screen area of a competitive wellpoint, either directly or by comparison with its own wellpoint.
2. Representing that wellpoints manufactured by its competitors have only a limited use as jetting points, or back waste the jetting water, or are otherwise inefficient or difficult to jet because equipped with only one valve.
3. Representing that one of its wellpoints is equal or superior to five of any other wellpoints.
4. Representing that its wellpoints never clog up.
5. Representing that contractors all over the world testify that operating costs of its wellpoint system are always 50 percent or any other constant percentage lower than operating costs of competitive wellpoint systems.

It is further ordered, That the respondent shall within 30 days after the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

ABRAHAM WELKIN AND MINNIE WELKIN, TRADING AS
PRINCESS 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 4631. Complaint, Jan. 22, 1942¹—Decision, Aug. 25, 1942

Where two individuals, engaged in interstate sale and distribution of knitting yarns—

(a) Made use in catalogues and on labels attached to their products of such terms as "Cashmere Sport Yarn," "Sporting Angora," "Shetland Floss," "Zephyr Tweed," and "Deluxe Tweed," understood by a substantial portion of the purchasing public to mean, respectively, yarns composed of the hair of the Cashmere goat, of the Angora goat, of wool derived from Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland, or composed entirely of wool;

The facts being said "Cashmere Sport Yarn" was not composed in whole or in part of the hair of the Cashmere goat, said "Sporting Angora" was about 25 percent rabbit's hair and 75 percent wool, said "Shetland Floss" was made of domestic wool, and said "Zephyr Tweed" and "Deluxe Tweed" were not all wool, but contained both wool and rayon;

(b) Falsely represented as silk yarns composed of cotton, rayon, and silk, and of 50 percent wool and 50 percent rayon, through designations "Silk Flake" and "Silk Wool," respectively;

(c) Misrepresented their aforesaid and their "Frosted Zephyr," "Pompadour," and "Zephyr Paradise," and other yarns, through failure to disclose that they were composed in part of rayon which, when made to simulate silk or wool, is practically indistinguishable therefrom; with result that a substantial portion of the purchasing public bought said yarns as composed of the genuine product simulated thereby;

(d) Falsely represented certain of their products as imported from Scotland or the Province of Saxony, respectively, through use of designations "Scotch Tweed" and "Saxony Zephyr" to describe yarn of domestic manufacture; and

(e) Falsely represented that they owned a factory in which they manufactured the yarns they sold, through use of words "Office and Factory at 49 Essex Street, New York City"; notwithstanding fact they bought their supplies from domestic manufacturers;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby inducing it to purchase their products because of such belief:

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

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

Mr. Donovan Divet for the Commission.

Mr. S. Robert Israel, of New York City, for respondents.

¹ Amended and supplemental.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Abraham Welkin and Minnie Welkin, his wife, individually, and trading as Princess Yarn 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Abraham Welkin and Minnie Welkin, his wife, are individuals, trading as Princess Yarn Co., with their principal place of business located at 49 Essex Street, in the city of New York, State of New York.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of various grades and types of knitting yarns. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in their 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 and for the purpose of inducing the purchase of their said products the respondents have engaged in the practice of falsely representing the constituent fiber or material of which their products are made, such false representations being made by means of statements and legends appearing in catalogs and on labels attached to said products and in other printed and written material which they have distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Typical of the aforesaid practices is the use by the respondents of the words "Cashmere Sport Yarn" to designate and describe certain yarns which are not composed, in whole or in part, of the hair of the Cashmere goat.

The word "Cashmere" has long been understood and accepted by the purchasing public as designating and describing a particular type of wool derived from the hair of the Cashmere goat and when said word is used to designate and describe yarns having the general appearance of wool is understood by the purchasing public as denoting a product made entirely from the hair of the Cashmere goat.

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A further example of respondents' practice is the use of the words "Sporting Angora" to designate and describe yarns which are not composed, in whole or in part, of the hair of the Angora goat.

The word "Angora" has long been understood by the purchasing public as designating and describing a particular type of wool derived from the hair of the Angora goat and when said word is used to designate and describe yarns having the general appearance of wool is understood by the purchasing public as denoting a product made entirely from the hair of the Angora goat.

A further example of respondents' practice is the use of the words "Shetland Floss" to designate and describe yarns which are not composed, in whole or in part, of the wool of Shetland sheep raised on the Shetland Islands or on the contiguous mainland of Scotland.

The word "Shetland" has long been understood by the purchasing public as designating and describing a particular type of wool derived from the fleece of Shetland sheep raised on the Shetland Islands or on the contiguous mainland of Scotland and when said word is used to designate and describe yarns having the general appearance of wool is understood by the purchasing public as denoting a product made from the wool of such Shetland sheep.

Each of the afore described wools has been for a long time and is now well and favorably known to the purchasing public and there is a demand, public acceptance, and preference on the part of the purchasing public for yarns made therefrom.

A further example of respondents' practice is the use of the terms "Zephyr Tweed" and "DeLuxe Tweed" to designate and describe certain of their yarns which are not composed entirely of wool. The yarns designated "Zephyr Tweed" and "DeLuxe Tweed" are composed of wool with rayon nubs.

The word "Tweed" has been long and favorably known to the purchasing public as descriptive of products composed entirely of wool.

PAR. 4. Another and typical act on the part of the respondents is that of falsely representing that certain of their yarns are composed of silk or of a mixture of silk and other materials when such is not the fact. Among such representations are the legends "Silk Flake" and "Silk Wool." "Silk Flake" does not contain any silk but is composed of a mixture of cotton and rayon. "Silk Wool" contains no silk but is 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 silkworm. Silk products for many years

have held and still hold the confidence and esteem of the public for their preeminent qualities.

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 and feel 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 respondents also sell and distribute 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 Tweed," "Silk Wool," "Silk Flake" and certain other yarns designated by the respondents as "Frosted Zephyr," "Pompadour," "Zephyr Paradise," "Tropical Nub," "Mystic and Nub Velveen" and "Velveen." 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. By the means and in the manner aforesaid respondents also engage in the practice of falsely representing the place of origin of certain of their products. Among and typical of such false representations are the legends "Scotch Tweed" and "Saxony Zephyr" used in designating certain of their yarns. Through the use of such legends the respondents represent that the yarn designated "Scotch Tweed" is made from wool imported from Scotland and that the yarn designated "Saxony Zephyr" is made from wool imported from Saxony. In truth and in fact the wool used in making such yarns is not imported from said locations.

PAR. 6. Respondents have also misrepresented the nature of their business by using the words "Offices and Factory at 49 Essex Street, New York City," in their catalogs which display the various kinds of yarn which they offer for sale, thereby representing that they are the owners of and conduct a factory in which their said yarns are spun and that they are the manufacturers of said yarns. In truth and in fact, respondents do not operate or control and have not either operated or controlled a plant, factory or machinery for the manufacture of their products, but on the contrary the respondents buy such articles of merchandise which are made or manufactured

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in a plant or factory and by machinery which they neither own, operate, nor control.

PAR. 7. A substantial number of the members of the purchasing public has a preference for buying merchandise, including the products sold by respondents, directly from the manufacturers thereof, believing that by so doing a more uniform line of goods, superior quality, lower prices and other advantages can be obtained.

PAR. 8. The use by the respondents of the foregoing 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 said statements and representations are true and that respondents have truthfully represented the constituent fiber and material of which their products are made, as well as the nature of their business. As a result of such erroneous and mistaken belief engendered as herein set forth the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' products.

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 November 13, 1941, issued and subsequently served its complaint in this proceeding upon respondents Abraham Welkin and his wife, Minnie Welkin, individually, and trading as Princess Yarn Company, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondents' answer to said complaint, the Commission on January 22, 1942, issued and subsequently served its amended and supplemental complaint upon said respondents, charging them with unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Thereafter, testimony and other evidence in support of and in opposition to the allegations of said amended and supplemental complaint were introduced before an examiner of the Commission therefore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint, testimony and other evidence, report of the trial examiner, 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, Abraham Welkin and his wife, Minnie Welkin, are individuals, trading as Princess Yarn Co., with their principal place of business located at 49 Essex Street, New York, N. Y.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution of various types and grades of knitting yarns. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States. Respondents maintain, and have maintained, a source of trade in their 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 respondents have, by means of advertisements in magazines and in periodicals, secured inquiries concerning and requests for knitting yarns and have distributed to purchasers and prospective purchasers catalogues containing descriptions and samples of yarns offered for sale and sold by them. For the purpose of inducing the purchase of their said knitting yarns, respondents have engaged in the practice of falsely representing the constituent fibers or materials of which their yarns are made, such false representations being made by means of statements and legends appearing in catalogues which they have distributed among customers and prospective customers located in various States of the United States and on labels attached to their said products. Among and typical of the false representations made by respondents in the aforesaid manner are the following:

The use of the term "Cashmere Sport Yarn" to designate and describe certain yarns which are not composed in whole or in part of the hair of the Cashmere goat. The term "cashmere" as applied to knitting yarns is understood by a substantial portion of the purchasing public to mean yarn made from the hair of the Cashmere goat.

The use of the term "Sporting Angora" to designate and describe yarns which are not composed in whole or in part of hair of the Angora goat, but which are in fact composed of approximately 25% rabbit hair and 75% wool. The word "angora" as applied to knitting yarns

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is understood by a substantial portion of the purchasing public to mean yarn made from the hair of the Angora goat.

The use of the term "Shetland Floss" to designate and describe yarns which are not composed in whole or in part of the wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland, but which are in fact made of domestic wool. The word "Shetland" as applied to knitting yarns is understood by the purchasing public to mean a particular type of wool derived from Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland.

The use of the terms "Zephyr Tweed" and "De Luxe Tweed" to designate and describe certain of their yarns which are not composed entirely of wool, but which in fact contain wool and rayon. The word "tweed" as applied to knitting yarns is understood by a substantial portion of the purchasing public to mean yarn composed entirely of wool.

PAR. 4. Various of the yarns sold and distributed by respondents are falsely represented as being composed in whole or in part of silk. The term "silk" is understood by a substantial portion of the purchasing public to mean silk, the product of the cocoon of the silkworm. Among the yarns described by respondents as being silk or containing silk is one designated "Silk Flake" which is in fact composed of cotton, rayon, and silk, and one described as "Silk Wool" which is in fact composed of approximately 50% wool and 50% rayon.

In addition to the false representations that certain yarns contain silk, respondents further misrepresent such yarns and others, such as "Frosted Zephyr," "Pompadour," and "Zephyr Paradise," by failing to disclose that they are composed in part of rayon. Rayon used in yarn is a chemically manufactured fiber which can be so made as to closely simulate silk or wool. When manufactured to simulate silk, it has the feel and appearance of silk; and when manufactured to simulate wool, it has the feel and appearance of wool. By reason of these qualities rayon, when manufactured to simulate silk or wool and not designated as rayon, is practically indistinguishable from silk or wool, as the case may be, and failure of respondents to disclose the rayon content of yarns containing that product has resulted in the purchase of such yarns by a substantial portion of the purchasing public under the erroneous impression that they were composed of the genuine product simulated.

PAR. 5. Respondents have falsely represented the place of origin of certain of their products. Among such false representations is the use of the term "Scotch Tweed" to designate and describe a yarn of domestic manufacture which is not composed of wool imported

from Scotland, and also the use of the term "Saxony Zephyr" to designate and describe a yarn of domestic manufacture which is not composed of wool imported from the Province of Saxony. A substantial portion of the purchasing public understands the term "Scotch Tweed" as applied to yarns to mean that the yarn or the wool from which it is made was imported from Scotland, and understands the term "Saxony Zephyr" as applied to yarns to mean that the yarn or the wool from which it is made was imported from the Province of Saxony.

PAR. 6. Respondents have also misrepresented the nature of their business by using the words "Office and Factory at 49 Essex Street, New York City," thereby representing that they are the owners of and conduct a factory in which the yarns which they offer for sale and sell are spun, and that they are the manufacturers of such yarns. In fact respondents do not operate or control, and have not operated or controlled a plant, factory, or machinery for the manufacture of the yarns sold by them, but, on the contrary, buy their supplies of yarn from domestic manufacturers. A substantial portion of the purchasing public has a preference for buying merchandise, including the products sold by respondents, directly from the manufacturer thereof, believing that by so doing certain advantages are obtained, such as securing a lower price through the elimination of middlemen.

PAR. 7. The use by the respondents of the acts and practices set forth above 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 said statements and representations are true, and as a result of such erroneous and mistaken beliefs, members of the purchasing public have been induced to purchase, and have purchased, substantial quantities 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 amended and supplemental complaint of the Commission, 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

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examiner, and brief filed by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Abraham Welkin and Minnie Welkin, individually, and trading as Princess Yarn Co. or under any other name, jointly or severally, their representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of knitting yarns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Cashmere," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of hair of the Cashmere goat: *Provided, however,* That in the case of a product composed in part of 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 "Angora," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of hair of the Angora goat: *Provided, however,* That in the case of a product composed in part of 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.

3. Using the word "Shetland," or any simulation thereof, either alone or in connection or conjunction with any other words or words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however,* That in the case of a product composed in part of wool of Shetland sheep 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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4. Using the word "Tweed," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to 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.

5. Using the word "Scotch," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product not imported from Scotland or made of materials imported from Scotland: *Provided, however,* That in the case of a product composed in part of wool imported from Scotland and in part of other fibers or materials, such word may be used as descriptive of the content imported from Scotland 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 word "Saxony," or any simulation thereof, either alone or in connection or conjunction with any other word or words to designate, describe, or refer to any product not imported from the Province of Saxony or made of materials imported from the Province of Saxony: *Provided, however,* That in the case of a product composed in part of wool imported from Saxony and in part of other fibers or materials, such word may be used as descriptive of the content imported from the Province of Saxony 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.

7. Using the word "Silk," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of silk, the product of the cocoon of the silkworm: *Provided, however,* That in the case of material composed in part of silk, the product of the cocoon of the silkworm and in part of other fibers or materials, such word may be used as descriptive of the content which is silk, the product of the cocoon of the silkworm, 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.

8. Advertising, offering for sale, or selling, products composed in whole or in part of rayon without clearly disclosing such rayon con-

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tent; and when products are composed in part of rayon and in part of other fibers or materials, all such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

9. Representing or implying by the use of the word "Factory," or in any manner whatsoever, that respondents own, control, or operate a factory in which the yarns they offer for sale or sell are made, or representing or implying in any manner that yarns or other products not manufactured by respondents are manufactured by them.

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 no provision of this order to cease and desist 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 rules and regulations promulgated thereunder.

IN THE MATTER OF

W. B. SAUNDERS COMPANY, J. B. LIPPINCOTT COMPANY,
 C. V. MOSBY COMPANY, CHICAGO MEDICAL BOOK
 COMPANY, ET AL.

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

Docket 3558. Complaint, Aug. 26, 1938—Decision, Aug. 26, 1942

Where three corporations, engaged in the sale and distribution at wholesale and retail of medical books, and constituting, respectively, the largest wholesale distributors in New York and vicinity, in the Middle West, and in the South and Southwest of such books, substantial portion of which were purchased by schools, colleges, libraries, hospitals, and other State, county, and municipal institutions, and by departments and agencies of the United States Government—

- (a) Agreed among themselves, in 1935 and 1936, that in bidding and quoting prices for the medical book business of public institutions and Governmental agencies they, and each of them, would uniformly bid at, and quote, the prices and discounts fixed by the respective publishers, and thereafter did adhere to and quote prices and discounts so fixed; and
- (b) Entered into, on or about May 1936, an agreement and understanding assigning to one another certain territories of the United States for the handling and bidding for the medical book business of public institutions and Governmental agencies therein, agreeing not to bid or compete for such business in the particular territory assigned to one of the other distributors concerned; and pursuant thereto, refrained during the year aforesaid from bidding against or competing with one another in a large part of the United States, including the States of Texas, Illinois, and New York;

Tendency and effect of which agreements and understandings, and acts and things done pursuant thereto, were to eliminate and prevent price competition in the sale and offering for sale of medical books to public institutions and Governmental agencies throughout the United States, and to place in the hands of said distributors power to control and enhance prices of such books, and to restrain a normal flow of trade in commerce therein:

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

As respects proceeding involving alleged understandings and agreements entered into in 1935 and 1936 between the three largest wholesale distributors of medical books in New York and vicinity, in the Middle West, and in the South and Southwest, pursuant to which they uniformly bid at and quoted the prices and discounts for the medical book business of public institutions and Governmental agencies fixed by the publishers, and also assigned certain territories in the United States to one another, agreeing not to bid or compete against one another therein, and abiding thereby: A contention that it was more profitable for said distributors to confine their sale

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and distribution of such books within the geographical limits of the territory located in and adjacent to the cities in which their respective businesses were situated, and further, that as of July 1942 all of the books were received by said distributors from medical book publishers on a commission basis, did not affect disposition of proceeding in question.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Fletcher G. Cohn for the Commission.

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.

Ballard, Spahr, Andrews & Ingersoll, of Philadelphia, Pa., for Lea & Febiger.

Denning & Cross, of Washington, D. C., for T. H. McKenna, Inc.

Campbell, Clithero & Fischer, of Chicago, Ill., for Chicago Medical Book Co.

Turner, Rodgers, Winn & Sellers, of Dallas, Tex., for J. A. Majors & 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 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, 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 copartners, 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.

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Respondent, T. H. McKenna, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with principal office and place of business at 878 Lexington Avenue, New York City.

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, J. A. Majors & Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with principal office and place of business at Medical Arts Building, Dallas, Tex.

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. Respondents, T. H. McKenna, Inc., Chicago Medical Book Co. and J. A. Majors and Co., are wholesale and retail dealers in medical books. Respondent, T. H. McKenna, Inc., is the largest wholesale distributor of medical books in New York City and vicinity. Respondent, Chicago Medical Book Co., is the largest wholesale distributor of medical books in the Middle West. Respondent, J. A. Majors & Co., is the largest wholesale distributor of medical books in the South and Southwest. Each of said respondent dealers purchases, sells, and deals in medical books published and sold by each of said respondent 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. A substantial portion of the medical books sold annually in the United States are purchased by schools, colleges, libraries, hospitals, and other State, county, and municipal institutions and by departments and agencies of the United States Government. This institutional or governmental business is usually awarded after receipt of bids or quotations from medical book dealers and publishers, and the books required are generally purchased from the lowest bidder. Respondent dealers are or have been competitors for such busi-

ness throughout the United States and respondent publishers also frequently submit bids or quotations for such business, competing therefor with respondent dealers.

PAR. 5. Each of said respondent publishers fixes and prescribes the prices and discounts to be used by medical book dealers and distributors in bidding or quoting prices on the medical books of such publisher to Government agencies and public institutions. Each of said respondent publishers requires that the respondent dealers and other wholesale dealers to whom it sells or consigns medical books shall not quote prices to Government agencies and public institutions lower than the prices so fixed by such publisher, and sells medical books to such dealers on the condition, agreement and understanding that such dealers, respectively, will adhere to the prices and discounts fixed by the publisher, in selling or offering to sell to such Government agencies and public institutions.

PAR. 6. During the years 1935 and 1936 the three respondent dealers herein agreed, combined and conspired together, and each with the other, that in bidding and quoting prices for the medical book business of Government agencies and public institutions they, and each of them, would uniformly bid at and quote the prices and discounts fixed and prescribed for such business by the respective publishers of such medical books. Thereafter, in bidding and competing for such business said respondent dealers, in furtherance of said agreement, combination and conspiracy, have adhered to and quoted the prices and discounts on medical books fixed and prescribed by the respective publishers thereof.

PAR. 7. In or about May 1936 said respondent dealers entered into an agreement and understanding, each with the other, dividing and assigning certain territory in the United States for the purpose of handling and bidding for the medical book business of schools, colleges, libraries, hospitals, and Government agencies and institutions in such territory. Each of said respondents agreed not to bid or compete for such business in the states or territory assigned to one of the others. Pursuant to said agreement and understanding, said respondents have ceased and refrained from bidding against or competing with each other for such business in a large part of the United States, including the States of Texas, Illinois, and New York.

PAR. 8. The tendency and effect of the acts and practices above complained of has been and is to lessen, eliminate, and prevent price competition in the sale and offering for sale of medical books to schools, colleges, libraries, hospitals, and other public institutions and Government agencies throughout the United States, including

departments, agencies and instrumentalities of the Federal Government; to place in respondents the power to control and enhance prices for such books; to increase the prices paid by such purchasers thereof; and to obstruct, restrain and interfere with the normal and natural flow of trade and commerce in such books. 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 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 and unfair acts and practices in commerce in violation of the provisions of said act. After the filing of answers by each of the respondents in this proceeding, stipulations were entered into by all the respondents, except respondent, J. B. Lippincott Co., whereby it was stipulated and agreed that, subject to the approval of the Commission, statements of facts signed and executed by respondents and by W. T. Kelley, Chief Counsel for the Federal Trade Commission, may be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that the Commission may proceed upon said statements of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent J. B. Lippincott Co. not having entered into a stipulation, testimony, and other evidence were taken 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 upon the complaint, answers, stipulations (the stipulation executed by respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., having been approved, accepted, and filed), testimony and other evidence, report of the trial examiner and exceptions thereto, and brief in support of the complaint and brief in opposition thereto filed by respondent, J. B. Lippincott Co. (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. B. Saunders 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 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 its principal office and place of business located 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 its principal office and place of business located 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 their principal office and place of business located at 600 South Washington Square, Philadelphia, Pa.

Respondent, T. H. McKenna, 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 878 Lexington Avenue, New York, N. Y.

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 its principal office and place of business located at Congress and Honore Streets, Chicago, Ill.

Respondent, J. A. Majors & Co., 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 the Medical Arts Building, Dallas, Tex.

PAR. 2. Respondents, W. B. Saunders Co., J. B. Lippincott Co., C. V. Mosby Co., and Lea & Febiger, are publishers and sellers of various medical and other scientific books. Respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., are distributors of medical books at wholesale and retail. Respondent, T. H. McKenna, is the largest wholesale distributor of medical books in New York, N. Y., and vicinity; respondent, Chicago Medical Book Co., is the largest wholesale distributor of medical books in the Middle West; and respondent, J. A. Majors & Co., is the

largest wholesale distributor of medical books in the South and Southwest. Each of said respondent medical book distributors during the years 1935 and 1936 purchased, sold, and dealt in medical books published and sold by the aforesaid respondent medical book publishers.

PAR. 3. In the course and conduct of their respective businesses, respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., each transported, and do transport, medical books, or caused, and cause, the same to be transported from their respective places of business to purchasers thereof located in States of the United States other than the States in which their respective places of business are located, and have received, and receive, from States other than those States in which their respective places of business are located, medical books from the publishers thereof. Said respondents have maintained, and maintain, a current of trade in commerce in medical books between and among the States wherein their places of business are located and various other States of the United States.

PAR. 4. A substantial portion of the medical books sold annually in the United States were, and are, purchased by schools, colleges, libraries, hospitals, and other State, county, and municipal institutions, and by departments and agencies of the United States Government.

PAR. 5. During the years 1935 and 1936, respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., agreed among and between themselves that in bidding and quoting prices for the medical book business of public institutions and governmental agencies they, and each of them, would uniformly bid at and quote the prices and discounts fixed and prescribed for such business by the respective publishers of such medical books; and thereafter, during the aforesaid period, in bidding and competing for such business, said respondent medical book distributors, in furtherance of said agreement, did adhere to and quote the prices and discounts on medical books fixed and prescribed by the respective publishers thereof.

PAR. 6. On or about May 1936 said respondent medical book distributors entered into, and thereafter carried out, an agreement and understanding each with the other, dividing and assigning to one another certain territories in the United States for the purpose of handling and bidding for the medical book business of schools, colleges, libraries, hospitals, and other Governmental agencies and institutions in such territories. Each of said respondent medical book distributors agreed not to bid or compete for such business in the particular terri-

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tory assigned to one of the other respondent medical book distributors. Pursuant to such agreement and understanding, said respondent medical book distributors did cease and refrain during the year 1936 from bidding against or competing with one another for such business in a large part of the United States, including the States of Texas, Illinois, and New York. The said medical books were received by respondent medical book distributors in commerce between and among the several States of the United States, in some instances by means of outright sale from the publishers thereof and in other instances by means of consignment from the publishers thereof.

Respondent book distributors contend that it is more profitable for them to confine their sale and distribution of medical books, purchased as above set forth, within the geographical limits of the territory located in and adjacent to the States in which their respective businesses are situated, and, further, that as of July 1942 all of the books which they receive from medical book publishers are received on a consignment basis. The Commission concludes, however, that these matters do not affect the disposition of the present proceeding.

PAR. 7. The tendency and effect of the aforesaid agreements and understandings and the acts and things done pursuant thereto have been to lessen, eliminate, and prevent price competition in the sale and offering for sale of medical books to schools, colleges, libraries, hospitals, and other public institutions and Governmental agencies throughout the United States, including departments, agencies, and instrumentalities of the Federal Government, and to place in the hands of said respondent medical book distributors the power to control and enhance prices of such books, to increase the price paid by purchasers thereof, and to obstruct, restrain, and interfere with a normal and natural flow of trade in commerce in such books.

CONCLUSION

The aforesaid acts and practices of respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., 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.

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 with respect to respondent, J. B. Lippincott Co., taken before an examiner of the Commission thereto-

fore duly designated by it and briefs filed by said respondent and by counsel for the Commission, and upon certain stipulations as to the facts entered into between W. T. Kelley, Chief Counsel for the Commission, and respondents, other than, J. B. Lippincott Co., which provide, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon said respondents findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and its conclusion that certain of respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Chicago Medical Book Co. a corporation, T. H. McKenna, Inc., a corporation, and J. A. Majors & Co., a corporation, their officers, agents, 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 medical books 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 mutual understanding, agreement, combination, or conspiracy to fix, establish, or maintain the prices of medical books, or to determine, establish, or control the territory in which any of said respondents offers for sale or sells medical books, and from doing any of the following acts or things pursuant thereto:

1. Refraining from offering for sale or selling medical books in any place, locality, or territory.
2. Fixing, establishing, or maintaining any price, discount, or other terms of sale for any medical book or books to any purchaser or class or group of purchasers.

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 with respect to respondents, 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, trading under the firm name and style of Lea & Febiger, this proceeding 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.

Complaint

IN THE MATTER OF

KERSH A. SMITH, TRADING AS TEETERBABE COMPANY
OF COLORADO

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

Docket 3709. Complaint, Feb. 14, 1939—Decision, Aug. 31, 1942

Where an individual engaged in competitive interstate sale and distribution of electric irons, toasters, cameras, fans, and other articles—

Made use of certain devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes, through supplying a pull card for use in sale and distribution of articles concerned under a plan by which the person selecting the feminine name found to correspond with that concealed under card's master seal received choice of "Six useful, attractive household items," as thereon displayed, the amount paid for a chance was determined by the number disclosed under the pull tab selected, and operator was compensated, after sale of articles concerned, by having forwarded to him, along with the particular item of merchandise selected by the winning customer, a "Teeterbabe jumper seat"; and thereby

Supplied to and placed the means of conducting lotteries in the sale of his merchandise in the hands of operators who made use of aforesaid sales plan, involving chance to obtain article at less than normal retail price thereof; contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that offered by said competitors; whereby trade was diverted unfairly from them 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. William C. Reeves* and *Mr. Miles J. Furnas*, trial examiners.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. Robert T. Kingsley, 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 Kersh A. Smith, individually, and trading as Teeterbabe Co. of Colorado, 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, Kersh A. Smith, is an individual, trading as Teeterbabe Co. of Colorado, with his principal office and place of business located at 4714 Clay Street, Denver, Colo. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric irons, electric toasters, cameras, electric fans, hot plates, electric mixers, "Teeterbabe Jumper Seats," kiddie chairs, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his aforesaid place of business in Colorado to purchasers thereof in the various other States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles or merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

Respondent distributes and has distributed to the purchasing public through the United States mail certain literature and instructions including, among other things, pull cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said pull cards. One of respondent's pull cards bears twenty-four (24) feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said pull card has twenty-four (24) small, partially perforated tabs on the face of which is printed the word "pull." Concealed within each tab is a number which is disclosed when the tab is pulled or separated from the card. The pull card

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also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The pull card bears legends or instructions as follows:

DELUXE Six Star SPECIAL

6 Useful Attractive Household Items

Select your favorite girl's name and receive your choice and selection of either an

ELECTRIC MIXER—ELECTRIC IRON
ELECTRIC HOT PLATE—ELECTRIC TOASTER
8" ELECTRIC FAN—UNIVEX CAMERA

Numbers Under 29 Pay What You Draw

[SEAL]

Numbers Over 29 Pay Only 29¢

NO HIGHER

Do Not Break Seal Until All Collections Are Made

Write Your Name Opposite Name You Select on Reverse Side

Sales of respondent's merchandise by means of said pull cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or whether a person receives an article of merchandise without cost, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various pull cards accompanied by said order blanks, instructions, and other printed matter for use in the 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 pull cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said pull cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of

said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 14, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Kersh A. Smith, individually, and trading as Teeterbabe Co. of Colorado, 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 that act. After the filing of respondent's answer, testimony and other evidence in sup-

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port of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and 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, Kersh A. Smith, is an individual, trading as Teeterbabe Co. of Colorado, with his office and place of business located at 4714 Clay Street, Denver, Colo. Since June 1938, respondent has been engaged in the sale and distribution of various articles of merchandise, including, among others, electric irons, electric toasters, cameras, electric fans, hot plates, electric mixers, children's jumper seats known as "Teeterbabe Jumper Seats," and kiddie chairs.

PAR. 2. In the course and conduct of his business respondent causes and has caused his products, when sold, to be transported from his place of business in the State of Col. to purchasers thereof located in various other States of the United States. Respondent maintains, and since June 1938, has maintained, a course of trade in his merchandise in commerce among and between various States of the United States.

PAR. 3. In the sale and distribution of his merchandise respondent is, and has been, in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States.

PAR. 4. In selling and distributing his merchandise respondent uses certain devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which such merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan used by respondent is substantially as follows:

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Respondent distributes among various members of the purchasing public certain sales literature, including letters of instruction, circulars illustrating certain items of merchandise, and order blanks. Along with and as a part of this sales equipment, respondent supplies to such members of the public a device commonly known as a pull card. This pull card has 24 small, partially perforated tabs, on the face of each of which appears a feminine name, together with the word "Pull." Concealed under each tab is a number, which is not disclosed until the tab is pulled or separated from the card. The card also bears a large master seal, under which is concealed a feminine name corresponding to one of the names appearing on the face of the pull tabs. On the reverse side of the card are blank spaces in which may be written the names of the persons pulling the various tabs. The card also bears the following instructions:

DELUXE Six Star SPECIAL
6 Useful Attractive Household Items

Select your favorite girl's name and receive your choice and selection of
either an

ELECTRIC MIXER—ELECTRIC IRON
ELECTRIC HOT PLATE—ELECTRIC TOASTER

8" ELECTRIC FAN—UNIVEX CAMERA

Numbers Under 29 Pay What you Draw

[SEAL]

NUMBERS OVER 29 Pay Only 29¢

NO HIGHER

Do Not Break Seal Until All Collections Are Made

Sales of respondent's merchandise by means of the pull card are made in accordance with these instructions. Persons pulling the tabs pay to the operator on the card the number of cents corresponding to the figure concealed under the particular tab pulled, except that persons pulling tabs indicating numbers in excess of 29 pay only 29 cents. The purchaser selecting the tab which bears thereon the feminine name corresponding to the name concealed beneath the master seal receives one of the six articles of merchandise listed above, each of which has a normal retail value in excess of 29 cents. The persons pulling the other tabs on the card receive nothing for their money. Whether the persons pulling the tabs receive an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance, as is also the specific amount paid for the merchandise by the person pulling the lucky tab.

Upon completing the sale of all of the tabs on the card the operator of the card remits to respondent the total amount paid by the various purchasers, and respondent thereupon forwards to the operator a Teeterbabe Jumper Seat, together with the article of merchandise selected by the person pulling the lucky tab. The jumper seat is

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retained by the operator of the card, while the other article of merchandise is delivered by the operator to the purchaser.

PAR. 5. The persons to whom respondent supplies his pull cards use such cards in selling and distributing respondent's merchandise in accordance with the sales plan described above. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise. The use by respondent of this sales plan or method in the sale of his merchandise and the sale of such merchandise to the consuming public by and through the use of this plan or method are practices of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 6. The sale of merchandise to the purchasing public in the manner herein described involves a game of chance or the sale of a chance to obtain an article of merchandise at a price less than the normal retail price thereof. Among the individuals, firms, and corporations who sell and distribute merchandise in competition with respondent are those who are unwilling to adopt and use such method or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by the sales plan or method employed by respondent and by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale by those competitors of respondent who do not use such methods. Because of such game of chance, the use of this method by respondent has the tendency and capacity to divert and has diverted trade unfairly to respondent from his competitors who do not use such methods.

CONCLUSION

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

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 the complaint taken before trial examiners of the Commission theretofore duly designated by it, report of the

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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, Kersh A. Smith, individually, and trading as Teeterbabe Co. of Colorado, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electric irons, electric toasters, cameras, electric fans, hot plates, electric mixers, and children's chairs and jumper seats, or any other merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of agents, distributors, or members of the public, pull cards or other devices which are to be used, or may be used, in the sale or distribution of respondent's merchandise or any 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 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

CAPITOL PAINT & VARNISH WORKS, INC.

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

Docket 4536. Complaint, July 9, 1941—Decision, Aug. 31, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of a general line of paints and varnishes under the trade name "Capco House Paint," in competition with many who do not misrepresent their products—

(a) Represented and implied, through use of words "Pure Lead—Pure Zinc—Pure Oil" in advertisements and labels referring to the ingredients in said products, and which it featured as to place, type, and lettering as compared with matter purportedly giving the actual composition, that such paints were composed wholly of lead, zinc, and oil, and did not contain additional ingredients other than a normal percentage of drier; notwithstanding the fact that its said products contained excessive amounts of drier and ingredients other than those mentioned, and, in the case of some, contained no lead or zinc at all; and

(b) Set forth on labels statements purportedly showing the actual percentage of the various ingredients used in paint concerned, which were not always accurate in that the percentage of lead, zinc, and oil present was much less than stated, and in some instances less than 50 percent of quantity stated;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby causing it to purchase paints in question; whereby trade was unfairly diverted from competitors to it:

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. S. F. Rose for the Commission.

Mr. Frank E. Gettleman and *Mr. A. Schwarzbach*, 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 Capitol Paint & Varnish Works, 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, Capitol Paint & Varnish Works, Inc., is a corporation, organized, existing, and doing business under and by

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virtue of the laws of the State of Illinois, with its offices and principal place of business located at 1346 West Concord Street, Chicago, Ill.

PAR. 2. Said respondent is now and for more than 4 years last past has been engaged in the manufacture and sale of a general line of paints and varnishes, which products are manufactured at its place of business in the city of Chicago, State of Illinois.

The respondent causes its said products, when sold, to be transported from its said place of business in the State of Illinois to the purchasers thereof located at various points in the several States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains a course of trade in said products in said commerce.

PAR. 3. In the course and conduct of its said business, the respondent is in competition with individuals, partnerships, and other corporations engaged in the sale and distribution of paint and paint materials in commerce between and among the various States of the United States and in the District of Columbia. The products manufactured by the respondent are sold and distributed in said commerce under the trade name "Capco House Paint."

PAR. 4. In advertising matter used in soliciting the sale of said paints in said commerce and on the labels attached to the containers in which said paints are delivered to retailers for resale and to ultimate users, the respondent uses the words "Pure Lead—Pure Zinc—Pure Oil" in designating, describing and referring to the ingredients found in said paints. The words "Pure Lead—Pure Zinc—Pure Oil" are placed in such advertisements and on such labels in a conspicuous place in type and lettering larger than and distinctive from the type and lettering which purport to give the actual composition of such paints.

Through the use of the words "Pure Lead—Pure Zinc—Pure Oil," the respondent represents and implies, and the purchasers and users of such paints are thereby led to believe, that such paints are composed wholly of lead, zinc, and oil, and do not contain additional ingredients other than the normal percentage of drier found in all paints of the type sold by respondent.

In truth and in fact, none of respondents' said paints are composed wholly of lead, zinc, oil, and the normal percentage of drier, for all of said paints contain an excessive amount of drier and ingredients other than lead, zinc, and oil. Some of said paints do not contain any lead or zinc at all.

The statements placed on the labels by respondent purportedly showing the actual percentage of the various ingredients used in the paint and are not always accurate in showing the actual composition of the paint in that the percentage of lead, zinc, or oil present in said paint is much less than the percentage stated on the label. In some in-

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stances, said paints actually contain less than 50 percent of the quantity of lead, zinc, or oil stated on the label.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for paints composed wholly of lead, zinc, and oil and the usual percentage of drier.

PAR. 6. There are among respondent's competitors many who sell paint and paint products and who do not misrepresent their products or matters pertaining thereto.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive representations and implications has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and implications are true and causes a substantial number of members of the public to purchase respondent's said paints, thereby unfairly diverting trade in said commerce to respondent from its competitors to their injury and to the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 9th day of July, A. D. 1941, issued, and thereafter served its complaint in this proceeding upon respondent, Capitol Paint & Varnish Works, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Capital Paint & Varnish Works, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its offices and principal place of business located at 1346 West Concord Street, Chicago, Ill.

PAR. 2. Respondent is now, and for more than 4 years last past has been, engaged in the manufacture and sale of a general line of paints and varnishes, which products are manufactured at its place of business in the city of Chicago, State of Illinois.

The respondent causes its said products, when sold, to be transported from its said place of business in the State of Illinois to the purchasers thereof located at various points in the several States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, the respondent is in competition with individuals, partnerships, and other corporations engaged in the sale and distribution of paint and paint materials in commerce between and among the various States of the United States and in the District of Columbia. The products manufactured by the respondent are sold and distributed in said commerce under the trade name of "Capco House Paint."

PAR. 4. In advertising matter used in soliciting the sale of said paints in said commerce and on the labels attached to the containers in which said paints are delivered to retailers for resale and to ultimate users, the respondent uses the words "Pure Lead—Pure Zinc—Pure Oil" in designating, describing, and referring to the ingredients found in said paints. The words "Pure Lead—Pure Zinc—Pure Oil" are placed in such advertisements and on such labels in a conspicuous place in type and lettering larger than and distinctive from the type and lettering which purport to give the actual composition of such paints.

Through the use of the words "Pure Lead—Pure Zinc—Pure Oil," the respondent represents and implies, and the purchasers and users of such paints are thereby led to believe, that such paints are composed wholly of lead, zinc, and oil, and do not contain additional ingredients other than the normal percentage of drier found in all paints of the type sold by respondent.

In truth and in fact, none of respondent's said paints is composed wholly of lead, zinc, oil, and the normal percentage of drier, for all of said paints contain an excessive amount of drier and ingredients

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other than lead, zinc, and oil. Some of said paints do not contain any lead or zinc at all.

The statements placed on the labels by respondent purportedly showing the actual percentage of the various ingredients used in the paint are not always accurate in showing the actual composition of the paint in that the percentage of lead, zinc, or oil present in said paint is much less than the percentage stated on the label. In some instances, said paints actually contain less than 50 percent of the quantity of lead, zinc, or oil stated on the label.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for paints composed wholly of lead, zinc, and oil and the usual percentage of drier.

PAR. 6. There are among respondent's competitors many who sell paint and paint products and who do not misrepresent their products or matters pertaining thereto.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive representations and implications has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and implications are true, and causes a substantial number of members of the public to purchase respondent's said paints, thereby unfairly diverting trade in said commerce to respondent from its competitors 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 of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered, That respondent, Capitol Paint & Varnish Works, Inc., a corporation, its officers, representatives, agents, and employees,

directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its paints in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Pure Lead—Pure Zinc—Pure Oil," or other words of like import, to designate, describe, or refer to any paint not exclusively composed of lead, zinc, and oil, except for the addition of the usual and customary quantities of tinting material, thinner, and drier.

2. Representing, directly or by implication, that any paint contains any material or ingredient which it does not actually contain.

3. Representing, directly or by implication, that any paint contains materials or ingredients in quantities or proportions different from the actual quantities or proportions of such materials or ingredients in such paint.

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

GEORGE S. MOGILNER AND JAMES WALKER, TRADING
AS MERIT HEALTH APPLIANCE CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4543. Complaint, July 21, 1941—Decision, Aug. 31, 1942

Where two individuals, engaged in interstate sale and distribution of their "Merit Short Wave Diathermy" therapeutic apparatus; by means of advertisements in newspapers which circulated widely in different States, and through advertising circulars and frequent radio broadcasts, directly or by implication—

(a) Represented that the unsupervised use of their device by the lay public for self-diagnosed conditions, through self-application in the home, constituted a competent and effective treatment for numerous ailments, including rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and female disorders, and for the alleviation of pain resulting from such conditions; and that use of the device was entirely safe and harmless;

The facts being that while diathermy machines are in fairly common use among physicians, particularly those who specialize in physical therapy, it is their practice never to employ diathermy until after thorough diagnosis and definite establishment of the fact that the condition is one in which its use is proper, and never to leave application of the treatment, delegated, usually, to a trained technician, to the patient; physicians' use of diathermy in the treatment of ailments above set forth is limited to chronic cases since use in acute cases has a tendency to aggravate rather than alleviate the pain; there are various specific conditions in which its use is positively contraindicated, including menstruation, pregnancy, tuberculosis, cancer, acute appendicitis, and gastric ulcers, while use or excessive use in other conditions may spread the infection and lead to gangrene and amputation of the limb; in cases in which the skin has lost sense of heat, application may result in severe burns; due to the impossibility of a member of the lay public correctly diagnosing his condition or determining the underlying cause of the disorder, necessary medical treatment may be delayed; and in instances in which diathermy would be of therapeutic benefit, it is impossible for the layman to determine the method of application or frequency and extent of the treatment; and

(b) Failed to reveal all the facts material in the light of such representations, under prescribed or usual conditions, and that such device might safely be used only after competent medical diagnosis has determined that diathermy is indicated, and has prescribed the frequency and extent of the treatment, and the user has received adequate instruction by a trained technician in the use of the device;

With tendency and capacity to mislead and deceive the purchasing public into the mistaken belief that said device possessed therapeutic values which it did not, and that it might safely be used indiscriminately by the lay public,

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thereby causing said public to purchase substantial quantities of said device 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. Miles J. Furnas*, trial examiner.

Mr. James L. Baker, *Mr. John M. Russell* and *Mr. R. P. Bellinger* for the Commission.

Dockweiler & Dockweiler and *Mr. Frank W. Walden*, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that George S. Mogilner and James Walker, individuals, trading as Merit Health Appliance Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, George S. Mogilner and James Walker, are individuals, trading as Merit Health Appliance Co., with their office and principal place of business at 801-802 Foreman Building, 707 South Hill Street, Los Angeles, Calif., from which address they transact business under the above trade name.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain device or apparatus designated as Merit Short Wave Diathermy.

In the course and conduct of their business, the respondents cause said device or apparatus, when sold, to be transported from their place of business in the State of California, to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein, have maintained a course of trade in said device or apparatus, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and have caused the dissemination of, false advertisements concerning their said product by the United States mail and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of, false

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

Free \$7.50 SINUS PAD
With every DIATHERMY purchased this week.

LOW MONTH RENTAL

MERIT Short Wave Diathermy is now used in hundreds of homes, and is the ideal and most economical way to treat stubborn ailments, such as

Asthma	Pleurisy	Arthritis
Bronchitis	Sinus	Neuritis
Prostate	High Blood Pressure	

And Many Other Ailments.

Get the "proof of the pudding." Rent a Merit Short Wave Diathermy for one month and see for yourself what it will do for you. SEND FOR FREE FOLDER, "Short Wave Diathermy in Your Home."

Call at our office for FREE Demonstration, or arrange for a Demonstration in Your Own Home. NO OBLIGATION.

RENTED OR SOLD ON EASY TERMS

Office Hours 9-5:30 P. M.

Manufactured and Sold Direct by

MERIT HEALTH
APPLIANCE CO.
707 So. Hill St.
Suite 801-802.

Phone VA. 5682

MERIT SHORT WAVE DIATHERMY in Your Home

WHY are more MERIT sets being used and installed in California homes than the combination of all other makes put together?

SINUS—Specially designed mask for directing warm, penetrating radio waves through the sinuses. ARTHRITIS—Rheumatism ailments even chronic, have shown marked response to its permeating heat.

Send for Illustrated Literature, or Free Home Demonstration. Rented or Sold on Easy Terms.

MERIT HEALTH APPLIANCE CO.

707 S. Hill St., Los Angeles, Cal.

Phone: VAndike 5682 Suite 801-802

FULLY GUARANTEED by the only home diathermy company in California owning its own factory.

Easy to use—Merit Short Wave Diathermy is so simple that even a child can operate it.

No one can afford to be without this health guard and all can enjoy the benefit of Short Wave Diathermy treatments in their homes.

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The application of heat stimulates certain chemical processes of the body. The natural defensive powers of the tissues are assisted, repair and recovery are hastened by natural healthful means.

* * * the therapeutic value of heat has long been known, the old methods of application are ineffective, uncertain and uncomfortable, * * * because the heat does not penetrate to the deep-seated area involved. In a vain effort to secure deep penetration the skin is uncomfortably overheated and possibly burned or blistered.

Now modern science provides—in Short Wave Diathermy—a means of applying heat to diseased tissues that overcomes every objection to the uncertain methods of the past.

Short Wave Diathermy is pleasant and comfortable—the surface of the skin is not unduly heated.

Short Wave Diathermy is safe—the burns and blisters of the old-fashioned methods are absent.

* * * the safest, pleasantest and most effective methods of treatment ever discovered.

Outstanding results have been obtained with Short Wave Diathermy in the relief of suffering due to arthritis, neuritis, neuralgia, rheumatism, lumbago, sciatica, hay fever, asthma, gout, bronchitis, sinus inflammation and similar diseases. The value of Short Wave Diathermy cannot be over-estimated.

Now the Merit Short Wave Diathermy offers new hope for sufferers from agonizing pain, and various chronic disorders.

ARTHRITIS—Every arthritic should know that heat has been most effective in the relief of this dread disease. Short Wave Diathermy's proven ability in relieving the anguish of arthritis, neuritis, rheumatism, sciatica, lumbago and kindred ailments is well established.

SINUS INFLAMMATION—The alleviation and relief to sinus sufferers by Short Wave Diathermy is truly amazing.

FOR WOMEN—In the ailments common to women, Short Wave Diathermy has proved to be a veritable blessing for relieving much pain and suffering.

This treatment is so simple that you can take it yourself in your home without any assistance from anyone.

MERIT DIATHERMY CONTINUITY

We've all heard the wisdom of Benjamin Franklin expounded many times; he wrote this: "Never leave 'til tomorrow, that which you can do today." The habit of putting things off is all too common. Doubtless there are many listening to me today who have often said to themselves, "Someday I'm going to investigate this Merit Short Wave Diathermy and see if it can help me." But they have put it off and put it off—meantime missing out on the comfort that awaits them. If you are one of those who have planned to investigate this Merit Short Wave Diathermy—**DO IT TODAY**. Why continue to suffer untold agony when you can very simply alleviate your most painful conditions by simply applying two rubber pads to the sore and afflicted parts. This sends a penetrating internal heat down deep into the sore and aching parts of your body. If you suffer from arthritis, neuritis, bursitis, sciatica, neuralgia, sinus trouble or rheumatism in any part of your body, you may have a free trial of

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the Merit Short Wave Diathermy in your home any days from 9 A. M. 'til 9 P. M., by calling this number now * * * VAndike 5682 * * * VAndike 5682 * * *.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondents represent that their device or apparatus, advertised as Merit Short Wave Diathermy, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a scientific, safe, harmless, and effective means and method for the relief, cure, or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and colds, painful menstruation, female disorders, chronic disorders, and many other ailments, and for the alleviation of pain resulting therefrom; and that its use will have no ill effects upon the human body.

The foregoing representations are grossly exaggerated, false and misleading.

PAR. 5. The said device or apparatus is composed principally of a high-frequency generator encased in a portable steel cabinet. The circuit is a modified Hartley Circuit, two Taylor T-4055 tubes, push-pull, plus the regular chokes for proper control. The power to the circuit is furnished by a transformer of 1,300 volts (half wave), plate supply, 7½-volt filament supply. The output is inductively coupled and tuned with a series variable condenser and the wave length is approximately 12 meters. The maximum power output is approximately 120 watts calibrated on a photo-electric watt meter. Under ordinary lamp-load, it may be considered as 100 to 125 watts output. The power is transmitted to the user by two insulated rubber condenser pads, 7 by 9 inches or by two small pads, namely sinus and cuff applicators 4 by 7½ inches and 2 by 24 inches, respectively, used with one of the larger pads. No cable is used with this device. The application to the patient is made usually by placing the condenser pads in such position that the power may pass between said condenser pads through the affected area of the body, at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisement or under such conditions as are customary or usual, will not accomplish the results claimed by the respondents and is not a scientific, safe, harmless, and effective means and method to be used by the unskilled lay public for the relief, cure, or treatment of self-diagnosed diseases and ailments of the human body, or for the allevi-

ation of pain resulting therefrom, and may cause severe electric burns or other serious and irreparable injury to health.

The said device does not constitute a competent treatment for condition of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; acute inflammation of the muscles, such as lumbago and myositis; acute inflammation of the bursae, such as bursitis; acute inflammation of the joints, such as acute inflammatory arthritis; and rheumatic pains associated with acute inflammatory conditions of the joints, bursae, nerves, and muscles. Such treatment as aforesaid may result in further swelling of the inflamed tissue, thereby increasing the congestion of the inflamed part and in spreading the inflammation to adjacent tissue and allowing the absorption of toxins, when present.

Short-wave diathermy is contraindicated in all cases of menstruation; pregnancy; gastric ulcers; acute appendicitis; in areas where there is a probable malignancy; and where there is a hemorrhagic diathesis.

Furthermore, the use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptoms of some deeper, underlying disease or cause (such as pains due to tuberculosis of the joints, syphilis, and other infectious processes, or to tumor or cancer), may cause serious injury to health and also delay proper diagnosis and treatment.

The application of Merit Short Wave Diathermy in treating conditions of acute sinus trouble may result in further increasing congestion of the mucous membranes of the sinuses, nose, and throat, and facilitate extension of the infections and increased absorption of bacterial toxins.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in severe tissue destruction and severe burns.

Cancer or tuberculosis of the spine may evidence itself by severe pains in the knees and the application of diathermy by the untrained layman may delay proper diagnosis and treatment.

The application of this device for the treatment of pain in the extremities in the presence of advanced blood vessel changes of the legs or arms, when given in excess dosage, will cause serious injuries and may lead to gangrene and necessitate amputation of the legs or arms.

There are many diseases and conditions in the treatment of which, diathermy would be contra-indicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and

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duration of its use. In both of these classes of cases, the use of diathermy may aggravate rather than relieve such conditions. Many conditions, including some of those for which respondents recommend their device, are sometimes symptomatic or indicative of underlying systemic disorders for which diathermy would have no therapeutic value and may even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

PAR 6. In addition to the representations hereinabove set forth, the respondents have also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health.

The said advertisements are further false, as aforesaid in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

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

PAR 8. 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 July 21, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, George S. Mogilner and James Walker, individuals, trading as Merit Health Appliance Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondents, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and 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, George S. Mogilner and James Walker, are individuals, trading under the name Merit Health Appliance Co., with their office and principal place of business located at 707 South Hill Street, Los Angeles, Calif. They are engaged in the sale and distribution of a therapeutic device or apparatus designated by them as Merit Short Wave Diathermy.

PAR. 2. In the course and conduct of their business respondents cause their device, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of promoting the sale of their product, respondents have inserted advertisements in Los Angeles newspapers which have a wide circulation not only in the State of California but in other

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States of the United States as well. Respondents have also distributed advertising circulars by means of the United States mails to numerous prospective purchasers located outside the State of California. Frequent use of radio broadcasts has also been made by respondents in advertising their device.

Among and typical of the many statements and representations appearing in respondents' advertisements are the following:

MERIT SHORT WAVE DIATHERMY IN YOUR HOME

Is the ideal and most economical way to treat stubborn ailments, such as

Asthma	Pleurisy	Arthritis
Bronchitis	Sinus	Neuritis
Prostate	High Blood Pressure	

Any Many Other Ailments

Get the "proof of the pudding." Rent a Merit Short Wave Diathermy for one month and see for yourself what it will do for you. SEND FOR FREE BOOKLET, "Short Wave Diathermy in Your Home." Free home demonstration on request.

RENTED OR SOLD ON EASY TERMS

* * *

MERIT SHORT WAVE DIATHERMY IN YOUR HOME

WHY are more MERIT sets being used and installed in California homes than the combination of all other makes put together?

SINUS—Specially designed mask for ARTHRITIS — Rheumatic ailments directing warm, penetrating radio waves even chronic, have shown marked response to its permeating heat.

Send for Illustrated Literature, or

FREE HOME DEMONSTRATION

* * *

* * * The application of heat stimulates certain chemical processes of the body. The natural defensive powers of the tissues are assisted, repair and recovery are hastened by natural healthful means.

* * * the therapeutic value of heat has long been known, the old methods of application are ineffective, uncertain and uncomfortable * * * because the heat does not penetrate to the deep-seated area involved. In a vain effort to secure deep penetration the skin is uncomfortably overheated and possibly burned or blistered.

* * * Now modern science provides—in Short Wave Diathermy—a means of applying heat to diseased tissues that overcomes every objection to the uncertain methods of the past. * * * Short Wave Diathermy is pleasant and comfortable—the surface of the skin is not unduly heated. Short Wave Diathermy is safe * * * the burns and blisters of the old-fashioned methods are absent.

* * * the safest, pleasantest, and most effective methods of treatment ever discovered.

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OUTSTANDING RESULTS have been obtained with Short Wave Diathermy in the relief of suffering due to arthritis, neuritis, neuralgia, rheumatism, lumbago, sciatica, hay fever, asthma, gout, bronchitis, sinus inflammation and similar diseases. The value of Short Wave Diathermy cannot be overestimated * * *.

NOW THE MERIT SHORT WAVE DIATHERMY OFFERS NEW HOPE FOR SUFFERERS FROM AGONIZING PAIN, AND VARIOUS CHRONIC DISORDERS

* * *

ARTHRITIS—Every arthritic should know that heat has been most effective in the relief of this dread disease. Short Wave Diathermy's proven ability in relieving the anguish of arthritis, neuritis, rheumatism, sciatica, lumbago, and kindred ailments is well established. * * *

* * *

SINUS INFLAMMATION—The alleviation and relief to sinus sufferers by Short Wave Diathermy is truly amazing. * * *

FOR WOMEN—In the ailments common to women, Short Wave Diathermy has proved to be a veritable blessing for relieving much pain and suffering.

* * *

ADVANTAGES OF HOME TREATMENT

THERE WHEN YOU NEED IT—the old axiom "an ounce of prevention," etc., holds true today. Therein lies one of the chief advantages of having MERIT SHORT WAVE DIATHERMY in your home right when you need it. When the ailment is in its initial stages it is there—ready to use and its application may prevent further progress of the disease. MERIT SHORT WAVE DIATHERMY can be used by every member of the family. CHRONIC CASES—Better results are often obtainable with MERIT SHORT WAVE DIATHERMY in your home, as you can apply its beneficial heat waves two or three times a day if necessary. Home treatments can be taken at a time most convenient to yourself. It is indispensable for invalids. RESTFUL—Short Wave Diathermy treatments are relaxing. When treatments are taken at home you can enjoy the full benefit of total relaxation. As this is conducive to good sleep, it is most desirable to take treatments just before going to bed. EASY TO USE—MERIT SHORT WAVE DIATHERMY is so simple that even a child can operate it.

* * *

* * * No one can afford to be without this health guard and all can enjoy the benefit of Short Wave Diathermy treatments in their homes.

We've all heard the wisdom of Benjamin Franklin expounded many times; he wrote this: "Never leave 'til tomorrow, that which you can do today." The habit of putting things off is all too common. Doubtless there are many listening to me today who have often said to themselves, "Someday I'm going to investigate this Merit Short Wave Diathermy and see if it can help me." But they have put it off and put it off—meantime missing out on the comfort that awaits them. If you are one of those who have planned to investigate this Merit Short Wave Diathermy—DO IT TODAY. Why continue to suffer untold agony when you can very simply alleviate your most painful

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conditions by simply applying two rubber pads to the sore and afflicted parts. This sends a penetrating internal heat down deep into the sore and aching parts of your body. If you suffer from arthritis, neuritis, bursitis, sciatica, neuralgia, sinus trouble or rheumatism in any part of your body, you may have a free trial of the Merit Short Wave Diathermy in your home any day from 9 A. M. 'til 9 P. M., by calling this number now * * * VAndike 5682 * * * VAndike 5682 * * *.

PAR. 4. Through the use of these representations and others of a similar nature, respondents have represented, directly or by implication, that the unsupervised use of their device by the lay public for self-diagnosed conditions through self-application in the home constitutes a competent and effective means and method for the treatment of numerous ailments, disorders, and conditions of the human body, including, among others, rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and female disorders, and for the alleviation of pain resulting from such conditions; and that such use of the device is entirely safe and harmless.

PAR. 5. Medical diathermy may be defined as the therapeutic use of heat generated in the tissues of the body by artificial means. Respondents' device is what is known as a short-wave diathermy machine. The essential part of the device is a high-frequency generator which is encased in a portable steel cabinet. The electric power generated by the machine is transmitted to the user through rubber condenser pads which are attached to the machine by means of cords. The pads are intended to be placed on the affected area of the body in such position that the power generated by the machine passes between the pads and through the affected area. The resistance of the tissues of the body to the power produces the heat which forms the basis for the therapeutic value of the machine.

PAR. 6. Diathermy machines are now in fairly common use among physicians, particularly among those who specialize in physical therapy. Such machines, however, are used with caution, it being recognized by the medical profession that they possess definite potentialities for harm and that there are numerous conditions in which diathermy is positively contraindicated. Diathermy is never employed by physicians until after a thorough diagnosis of the patient has been made and it has definitely been established that the patient's condition is one in which the use of diathermy is proper. Moreover, the application of the treatment is never left to the patient but is carefully supervised by the physician, the application usually being delegated to a trained technician.

Generally speaking, diathermy is used only in those cases where the condition is chronic. It is not used in acute conditions, which are usually accompanied by inflammation resulting from congestion

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due to an engorgement of blood. The effect of diathermy in such cases is to increase the congestion of blood at the affected area, with the result that the patient's condition is definitely aggravated rather than improved. The congestion of the inflamed area may cause the inflammation to spread to adjacent tissues, and may also cause the absorption by such tissues of any infection which may be present in the affected area. Likewise, diathermy is always avoided in cases where there is a hemorrhagic condition or even a tendency to hemorrhage.

While diathermy is occasionally used by physicians in the treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and female disorders, its use is limited to those cases in which the condition is chronic rather than acute. It is not a competent or effective treatment for any of these specific ailments, or for any other ailment, which is in the acute stage or in which acute inflammation is present. In all such cases, moreover, the use of diathermy has a tendency to aggravate and increase the pain rather than alleviate it, this being due to the increased congestion and inflammation resulting from the treatment.

Among the specific conditions in which diathermy is positively contraindicated are menstruation, pregnancy, tuberculosis, cancer, acute appendicitis, and gastric ulcers.

In cases of acute sinus trouble, the use of diathermy may result in increasing the accumulation of pus in the sinuses, which in turn may cause the extension of the infection to other organs of the body.

The excessive application of diathermy for the treatment of pains in the arms and legs, in the presence of advanced blood vessel changes, may lead to gangrene and necessitate amputation of the arm or leg.

Another danger which attends the unsupervised use of diathermy by the layman is that cases are fairly frequent in which certain areas of the skin have lost the sense of heat. In such cases, the application of the treatment is likely to be excessive and may result in severe burns.

Moreover, many disorders and conditions of the body, including some of those for which respondents recommend their device, are frequently but symptoms of more serious, underlying disorders for which diathermy would have no therapeutic value and might even be injurious. For example, neuralgia and neuritis may be symptoms of tuberculosis of the joints, syphilis, or other infectious processes, or tumor or cancer. Also, cancer in the spine and tuberculosis in the spine may evidence themselves by pain in the knees or elbows or other parts of the body. It is impossible for a member of the lay public correctly to diagnose his condition or determine the underlying cause

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of the disorder, and, in consequence, necessary medical treatment may be delayed. Even in those cases where diathermy would be of therapeutic benefit, it is impossible for the layman correctly to determine the method of application or the frequency and extent of the treatment.

PAR. 7. The Commission therefore finds that the representations made by the respondents with respect to their device, as set forth in paragraphs 3 and 4 hereof, are misleading and deceptive, and constitute false advertisements.

PAR. 8. The Commission finds also that respondents' advertisements are false for the further reason that they fail to reveal all of the facts material in the light of the representations made therein, and fail to reveal the consequences which may result from the use of respondents' device under the conditions prescribed in the advertisements or under such conditions as are customary or usual. The advertisements are false also in that they fail to reveal that respondents' device may safely be used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated, and has prescribed the frequency and extent of the treatment, and the user has received adequate instruction by a trained technician in the use of the device.

PAR. 9. The Commission finds further 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 into the erroneous and mistaken belief that respondents' device possesses therapeutic values which it does not in fact possess, and that such device may safely be used indiscriminately by the lay public, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' device 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 the 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 the respondents, George S. Mogilner and James Walker, individually and trading as Merit Health Appliance 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 or distribution of respondents' device designated "Merit Short Wave Diathermy," or any other device of substantially similar character, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisements by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication,

(a) that respondents' device is safe or harmless.

(b) that respondents' device constitutes a competent or effective treatment for, or will alleviate pain resulting from, rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, female disorders, or any other ailment or disorder of the human body, unless such advertisement is specifically limited to those cases in which the condition is chronic rather than acute, and in which there is an absence of acute inflammation.

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 clearly and conspicuously that respondents' device is not safe for use unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated, and has prescribed the frequency and rate of application of the treatments, and the user has been adequately instructed by a trained technician in the use of such device.

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' device, which advertisement contains any representation prohibited in para-

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graph 1 hereof or which fails to contain the warning set forth 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, the 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.

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IN THE MATTER OF
GIROUX 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 4751. Complaint, Mar. 16, 1942—Decision, Sept. 1, 1942

Where Lea & Perrins "Worcestershire Sauce" had long been made in England and imported into the United States in highly distinctive bottles, containers, and wrappings, and as thus made and imported, and later made in the United States in accordance with a secret formula, had come to enjoy Nationwide popularity for many years and to be preferred over the much cheaper domestic Worcestershire Sauces; and thereafter a domestic manufacturer, engaged in interstate sale and distribution of its much cheaper Worcestershire Sauce which was similar in color, odor and general appearance to the aforesaid Lea & Perrins, and which, as Worcestershire Sauce, it sold under various trade names and brands, together with its own name or the name of the distributor on label and wrapper—

(a) Made use of labels and wrappers for its said sauce, packaged in containers of the same size and shape as those used by said Lea & Perrins, upon which the typography, border, dividing lines and color scheme were similar to, and in some instances the phrases identical with, those on the wrapper or label long theretofore used by said Lea & Perrins;

With tendency and capacity to mislead and deceive members of the purchasing public into the belief that its Worcestershire Sauce was in fact the Worcestershire Sauce made and sold by Lea & Perrins, and as a result, into purchase of substantial quantities thereof; and

(b) Falsely represented to the purchasing public, through use of trade name or brand "English Pride" in designating its sauce and "Old English Brand" upon private brand merchandise, that its said domestic product was made in England and imported into the United States;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said product was imported from England, and as a result into purchase of 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. S. F. Rose for the Commission.

Mr. C. P. Goepel and *Diamond, Rabin & Mackay*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Giroux Co., Inc., a

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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, Giroux Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 401 West Thirteenth Street, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a table sauce under the trade names or brands of "English Pride," "Apex," and "Parliament." Respondent also sells said sauce as private brand merchandise to distributors under various trade names. Among and typical of such private brand trade names are "Monarch Brand," "Sunbeam," "Buddie Brand," and "Old English Brand." Following the trade or brand name the words "Worcestershire Sauce" are always used. The aforesaid brands or labels are attached to each bottle of said sauce and also printed on the wrapper in which the bottles are enclosed. The name of the respondent or distributor is also printed on both the label and wrapper. All of the above-designated sauces are put up in 5-ounce bottles and are sold as low as 65 cents per dozen, and retail for 10 cents or more per bottle.

Respondent causes its said product, when sold, to be shipped and transported from its aforesaid place of business in the State of New York to the purchasers thereof located in States other than the State of New York, who in turn sell to retailers who sell to the consuming public. 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 the District of Columbia.

PAR. 3. In 1835, Lea & Perrins, a copartnership, began the manufacture of a sauce in the County Worcestershire, England, which they called "Worcestershire Sauce," and began the exportation thereof to the United States about 1849 and continued to export it in very large quantities until about the year 1898. During said period this product was sold extensively in all parts of the United States. In 1898 the partnership became incorporated under the laws of the State of New York and began the manufacture of the sauce in this country. Since then it has been, and now is, engaged in the business of selling and shipping Lea & Perrins' Worcestershire Sauce from New York City in said State of New York to wholesale grocers in every State of the United States. The business of this corporation, in the sale of Wor-

cestershire Sauce in the United States, amounts to more than one million dollars per year. Lea & Perrins' Worcestershire Sauce is prepared according to a secret formula. This product is one of recognized and uniform excellence, and has enjoyed a Nation-wide popularity for many years. The wholesale price of Lea & Perrins' Worcestershire Sauce is \$2.75 per dozen bottles; it retails at 30 cents per bottle. There is a decided preference among the consuming public for Lea & Perrins' Worcestershire Sauce, as compared to the Worcestershire Sauce sold by respondent.

The size and shape of the bottles containing Lea & Perrins' Worcestershire Sauce, and the features of Lea & Perrins' label and wrapper have for many years, been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public.

PAR. 4. The sauce sold by respondent is strikingly similar in color, odor, and general appearance to Lea & Perrins' Worcestershire Sauce. All of these sauces are packed in 5-ounce bottles which are the same distinctive size and shape as that used by Lea & Perrins in bottling its product. Respondent also uses a wrapper of the same type of paper and same color on all of these sauces as is used by Lea & Perrins, upon which the typography, border, dividing lines, color scheme, and other distinctive features in the printed matter, including in some instances the identical wording, simulate the wrapper or label now used by Lea & Perrins and so used for many years prior to the adoption thereof by the respondent.

PAR. 5. The use by the respondent of labels and wrappers simulating the labels and wrappers used by Lea & Perrins, and the use by the respondent of bottles of the same size and distinctive shape as those used by Lea & Perrins, have had and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that respondent's Worcestershire Sauce is in fact Worcestershire Sauce manufactured and sold by Lea & Perrins and into the purchase of substantial quantities of respondent's product as a result of such erroneous and mistaken belief so engendered.

PAR. 6. The use by the respondent of the trade name or brand "English Pride" in designating its sauce, and of the name "Old English Brand" upon private brand merchandise, serve as representations to the purchasing public that said sauce is made in England and imported into the United States. In truth and in fact, said product is manufactured by respondent in the State of New York and is not an imported product.

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PAR. 7. There is a preference among a substantial portion of the purchasing public for Worcestershire Sauce made in England, and there is a firm and fixed belief among such persons that it is superior to domestic products of like character.

PAR. 8. The use by the respondent of the said trade names or brands "English Pride" and "Old English Brand" 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 products are imported from England, and into the purchase of substantial quantities of said products as a result of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of March 1942, issued and thereafter served its complaint in this proceeding upon respondent, Giroux Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 4, 1942, respondent filed its answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the secretary-treasurer of the respondent corporation and by its 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 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 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. Respondent 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, answered, 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, Giroux Co., Inc., is a corporation, organized and existing under and by the virtue of the laws of the State of New York, with its principal place of business located at 401 West Thirteenth Street, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a table sauce under the trade name or brand of "Parliament." At various times during the past several years, respondent has manufactured, sold, and distributed its said sauce under the trade names and brands of "Apex," "English Pride," and "Old English Brand". Respondent's "Apex" brand was discontinued several years ago. "Old English" brand, a customer's brand, was discontinued about 1938, and its "English Pride" brand was discontinued on January 12, 1942. The president of respondent corporation was interviewed by a representative of the Federal Trade Commission with respect to the matters involved in this proceeding on June 8, 1937. Respondent also sells said sauce as private brand merchandise to distributors under various trade names. Among and typical of such private brand trade names are: "Monarch Brand," "Sunbeam," "Buddie Brand," and "Old English Brand," the last of these having been discontinued. Following the trade name or brand name the words "Worcestershire Sauce" are always used. The aforesaid brands or labels are attached to each bottle of said sauce and are also printed on the wrapper in which the bottles are enclosed. The name of the respondent or distributor is always printed on both the label and the wrapper. All of the above designated sauces are or were put up in 5-ounce bottles and are or were sold as low as approximately 65 cents per dozen, and retail or retailed for 10 cents or more per bottle.

Respondent causes its said products, when sold, to be shipped and transported from its aforesaid place of business in the State of New York to the purchasers thereof located in States other than the State of New York, who in turn sell to retailers who sell to the consuming public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In 1835, Lea & Perrins, a copartnership, began the manufacture of a sauce in the County of Worcestershire, England, which they called "Worcestershire Sauce," and began the exportation thereof to the United States about 1849 and continued to export it in very large quantities until about the year 1898. During said period this

product was sold extensively in all parts of the United States. In 1898 the partnership became incorporated under the laws of the State of New York and began the manufacture of the sauce in this country. Since then it has been, and now is, engaged in the business of manufacturing, selling, and shipping Lea & Perrins, Inc., Worcestershire Sauce from New York City in said State of New York to wholesale grocers in every State of the United States. The business of this corporation, in the manufacture and sale of Worcestershire Sauce in the United States, amounts to more than one million dollars per year. Lea & Perrins, Inc., Worcestershire Sauce is prepared according to a secret formula. This product is one of recognized and uniform excellence, and has enjoyed a Nation-wide popularity for many years. The wholesale price of Lea & Perrins, Inc., Worcestershire Sauce is \$2.75 per dozen bottles; it retails at 30 cents per bottle. There is a decided preference among the consuming public for Lea & Perrins, Inc., Worcestershire Sauce, as compared to the Worcestershire Sauce sold by respondent.

The size and shape of the bottles containing Lea & Perrins, Inc., Worcestershire Sauce, together with the features of Lea & Perrins, Inc., label and wrapper have for many years been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public. Other manufacturers of Worcestershire Sauce have adopted and now use bottles of the same shape and size as the bottles used by Lea & Perrins, Inc. Such bottles are purchased as stock bottles from glass bottle manufacturers.

PAR. 4. The sauce sold by respondent is similar in color, odor, and general appearance to Lea & Perrins, Inc., Worcestershire Sauce. All of these sauces are packed in 5-ounce bottles which are the same size and shape as that used by Lea & Perrins, Inc., in bottling its product. For many years respondent has used a wrapper of the same type of paper and same color on all of these sauces as is used by Lea & Perrins, Inc., upon which the typography, border, dividing lines, color scheme, and other features in the printed matter, including in some instances the identical phrases, are similar to the wrapper or label now used by Lea & Perrins, Inc., and so used for many years prior to the adoption thereof by the respondent. The wrappers and labels theretofore used by the respondent were discontinued in December 1941.

PAR. 5. The use by the respondent of labels and wrappers similar to the labels and wrappers used by Lea & Perrins, Inc., together with the use by the respondent of bottles of the same size and shape as those used by Lea & Perrins, Inc., have had the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that respondent's Worcestershire Sauce is

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in fact Worcestershire Sauce manufactured and sold by Lea & Perrins, Inc., and into the purchase of substantial quantities of respondent's product as a result of such erroneous and mistaken belief so engendered.

PAR. 6. The use by the respondent of the trade name or brand "English Pride" in designating its sauce, and of the name "Old English Brand" upon private brand merchandise, have served as representations to the purchasing public that said sauce was made in England and imported into the United States. In truth and in fact, said product has been manufactured by respondent in the State of New York and is not an imported product.

PAR. 7. There is a preference among a substantial portion of the purchasing public for Worcestershire Sauce made in England, and there is a firm and fixed belief among such persons that it is superior to domestic products of like character.

PAR. 8. The use by the respondent of the said trade names or brands "English Pride" and "Old English Brand" has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are imported from England, and into the purchase of substantial quantities of said products as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by 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, Giroux Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or

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through any corporate or other device, in connection with the offering for sale, sale, and distribution of Worcestershire Sauce, whether sold under that name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using wrappers, containers, or labels which simulate the wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing its Worcestershire Sauce, or otherwise representing that respondent's product is Worcestershire Sauce manufactured and distributed by Lea & Perrins, Inc.

2. Using the words "English Pride" and "Old English Brand," or any other words which indicate English origin, to designate, describe, or refer to Worcestershire Sauce which is not made in England.

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

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IN THE MATTER OF

BIGELOW-SANFORD CARPET COMPANY, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 4207. Order, Sept. 4, 1942

Order modifying, as below set forth, cease and desist order in proceeding in question in which original findings and order issued on May 26, 1942, 34 F. T. C. 1252, 1260, so as to require respondent, its officers, etc., in connection with offer, etc., in commerce, of rugs, to cease and desist from—

- (a) Using the words "Perslamar" or "Kashamar," or any other word or name indicative of the Orient, to mark, etc., or to refer to rugs not there made and which do not possess all the essential characteristics and structure of the type of oriental rug which they purport to be;
- (b) Using the words "true copies," etc., 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, or representing in any manner that the rugs made and sold by it are true copies of museum Orientals or are reproductions of Orientals; and
- (c) Furnishing dealers buying its rugs with advertising copy for insertion by them in newspapers and other publications of general circulation which state, with reference thereto, "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"; and "Amazing reproductions from the original Orientals."

Mr. Randolph W. Branch for the Commission.

Wright, Gordon, Zachry, Parlin & Cahill, of Washington, D. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

The Federal Trade Commission having further considered the order to cease and desist heretofore issued in the above-entitled cause on the 26th day of May, A. D. 1942, and it appearing to the Commission that paragraph 2 of said order to cease and desist was indefinite and incomplete and that public interest required that said cause be reopened for the purpose of correcting said paragraph by the issuance of a modified order to cease and desist; and the Commission having heretofore entered its order upon the respondent to show cause within 10 days from date of service of said order, why a modified order to cease and desist should not be issued by the Commission amending said paragraph 2 of the order issued May 26, 1942, and 10 days having elapsed since date of service of said order to show cause and no objections having been filed by the respondent;

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and the Commission having considered the record and being now fully advised in the premises.

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 words "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. 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.

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;

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, Kirman's 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."

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
SPECIALTY ACCOUNTING SUPPLY MANUFACTURERS
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 4538. Complaint, Dec. 11, 1941.¹—Decision, Sept. 9, 1942

Where some 30 concerns, members of their unincorporated trade association, engaged in the manufacture and interstate sale and distribution of "printed stationery," i. e., (1) sales books, (2) continuous forms for use in billing machines, typewriters, or other office equipment, and (3) autographic registry stationery consisting of multiple sets of business forms for use in business recording machines; and in competition among themselves and with jobber and subjobber sellers of such products, except insofar as such competition had been restrained or eliminated as below set forth—

- (a) Agreed and conspired among themselves to organize and maintain, and did maintain, an unlawful combination to eliminate competition in the sale and distribution of their "printed stationery;" and in pursuance thereof—
 - (1) Made use of their said trade association as an instrument for their said joint purpose and action;
 - (2) Agreed to and did concerted fix and maintain prices, terms, and conditions of sale, and agreed to refrain from selling their products to jobbers and subjobbers who failed to observe and maintain such agreed prices, terms, and conditions; and agreed to and did make use of espionage, coercion, and cooperation in dealing with such jobbers and subjobbers, with intent and effect of enforcing such adherence; and exchanged and circulated lists of "recognized" jobbers and dealers;
 - (3) With intent and effect of diverting trade from nonmember competitors, gave special and valuable inducements to customers of nonmember manufacturers while denying such inducements to customers of member manufacturers; and operated "bogus independents" under the sponsorship and direction of certain of their own members through outright ownership, financial and contractual affiliations, and otherwise;
 - (4) Allocated and divided business among themselves; and entered into cross-licensing agreements and other licensing arrangements in connection with the claims of certain of their number under patents, pursuant to which they agreed that they would maintain prices, terms, and conditions of sale;
 - (5) Agreed to and did hold meetings under the auspices of their association, and through it and its officers, etc., cooperated with one another and with their jobbers and subjobbers in furthering and carrying out the acts, practices, and policies above set forth;
 - (6) Agreed to and did cooperate with each other in utilizing the facilities and agents of their association in formulating and using "open price plans" and "reporting plans," pursuant to which they made known to the

¹ Amended.

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secretary, other agents, and each other, for dissemination among them, information concerning the intimate details of their business transactions, including names and addresses of their customers, volume of production, sales and shipments, lists of prices to be quoted and charged on current and future sales, and the prices obtained on past transactions; and opened up their books for examination by their common agents; and

- (7) Through said filing of prices, quotations, and other information, and intimate business details, including sales of individual members and prices at which made, and said opening of their books and records, entered into and carried out an agreement and understanding that they would adhere to their price lists or price quotations and modifications thereof, filed and distributed as above set forth, until and unless intention to depart therefrom was given to their competitors by similar filing and distribution of other price lists, etc.; and

Where eleven of said manufacturing members, pursuant to and in furtherance of aforesaid agreements—

- (b) Acted collusively between and among themselves through collective discussion of bids and prices in advance of their submission and allocating particular orders through agreement that the one of their number first receiving favorable consideration from any prospective purchaser would inform the others, and with the understanding that others would be compensated in turn by similar reciprocal treatment; with intent and effect of frustrating honest rivalry, avoiding and preventing competition, deceiving buyers generally, and preventing consideration by them of genuinely competitive bids or prices, while attempting to keep up an appearance of competition and making false claims with regard thereto in the submission of bids;

With tendency and effect of unduly restraining and suppressing competition in sale and distribution of "printed stationery" and depriving the public of the benefit of competition among themselves and between them and their competitors:

Held, That such acts and practices, as above set forth, were all to the prejudice of the public and competitors, and had a dangerous tendency to and did actually suppress and lessen competition, placed in them power to control and enhance prices, unreasonably restrained commerce in said "printed stationery," and constituted unfair methods of competition therein.

Mr. Everette MacIntyre for the Commission.

The two concerns of *Winston, Strawn & Shaw*, of Chicago, Ill., and *Hayes & Sher*, of Washington, D. C., for Specialty Accounting Supply Manufacturers Association, and in case of former firm for O. L. Moore, secretary of aforesaid association.

Mayer, Meyer, Austrian & Platt, of Chicago, Ill., for Acme Register Co., Bonnar-Vawter Fanform Co., Stephen Greene Co., Hamilton Autographic Register Co. and The Rotary Printing Co., and along with *Stearns & McBride*, of Chicago, Ill., for The Wallace Press, Inc.

Doran, Kline, Cosgrove, Jeffrey & Russell, of Topeka, Kans., for Adams Bros. Sales Book Co.

Fish, Richardson & Neave, of New York City, for American Sales Book Co. and Cosby-Wirth Manifold Book Co.

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Mr. George A. McLaughlin, Mr. W. H. McLaughlin and Mr. C. S. McLaughlin, of Boston, Mass., for Atlantic Register Co. and C. W. Potter Co.

Leech & Radue, of Washington, D. C., and *Mr. Thomas J. Byrne and Cooper, Kerr & Dunham*, of New York City, for Autographic Register Co.

Mr. G. Ridgely Sappington, of Baltimore, Md., for Baltimore Sales Book Co.

Sloan & Sloan, of Philadelphia, Pa., for Craft Sales Book Co., Inc. *Toulmin & Toulmin*, of Dayton, Ohio, and *Mr. John M. Mason*, of Washington, D. C., for Egry Register Co.

Boyd, Brooks & Wickham, of Cleveland, Ohio, for W. S. Gilkey Printing Co.

Jenkins & Olson, of Springfield, Ill., for Hanna Register Co.

Mr. Abraham Greenspan, of Holyoke, Mass., for Philip Hano Co., Inc.

Mr. F. W. Andrews, of Alliance, Ohio, for McCaskey Register Co., and along with *Moore & Moore*, of Lisbon, Ohio, for Lisbon Sales Book Co.

Wood, Crump & Rogers, of Los Angeles, Calif., for Los Angeles Register & Printing Co.

Nieberding & Nieberding, of Cincinnati, Ohio, for The Miami Systems Corporation.

Mr. Raymond H. Dresser, of Sturgis, Mich., for National Carbon Coated Paper Co.

Newton, Brickett & Wentworth, of Boston, Mass., for The Potter Press.

Heller, Ehrman, White & McAuliffe, of San Francisco, Calif., for Schwabacher-Frey Co.

Mr. W. R. Morris, of Shelby, Ohio, for Shelby Salesbook Co.

Bostwick & Bostwick, of Chardon, Ohio, for The Snapout Forms Co.

E. H. & W. B. Turner and Mr. Harry N. Routzohn, of Dayton, Ohio, for The Standard Register Co.

Morrison, Hohfeld, Foerster, Shuman & Clark, of San Francisco, Calif., and *Mr. Henry B. Weaver*, of Washington, D. C., for Sunset-McKee Sales Book Co.

Chritton, Wiles, Davies, Hirschl, Schroeder & Merriam and Pam, Hurd & Reichmann, of Chicago, Ill., for United Autographic Register Co.

AMENDED COMPLAINT

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

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Trade Commission, having reason to believe that the persons, partnerships, and corporations named in the caption hereof, and hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Specialty Accounting Supply Manufacturers Association, hereinafter referred to as respondent association, is an unincorporated, voluntary trade association, organized to promote the mutual interests of its members. It was organized in 1933. Its headquarters now are, and have been for several years, in the offices of its secretary, respondent, O. L. Moore, 208 South LaSalle Street, Chicago, Ill., who is now and has for many years maintained and carried on a business of organizing, managing and directing the affairs of trade associations and groups in various industries, including the manufacturers and sellers of "printed stationery" (as it is hereinafter described and defined in par. 4 hereof) and their trade association, the Specialty Accounting Supply Manufacturers Association. The Specialty Accounting Supply Manufacturers Association serves its members as an instrument or vehicle for their joint and cooperative action. On and since July 1, 1939, its membership has included practically all manufacturers and sellers of sales books and continuous form sales records stationery, located and doing business in this country, 30 of whom are named as respondents in the caption hereof. From time to time its membership has included other persons, partnerships, and corporations engaged in like pursuits.

PAR. 2. The manufacturers of sales books and other forms of "printed stationery" (as it is hereinafter described and defined in par. 4 hereof) named in the caption hereof as respondents, and hereinafter referred to merely as manufacturing respondents, are more fully described as follows:

Acme Register Co. is a Delaware corporation, with its principal place of business at 413 South Fifth Street, Minneapolis, Minn.

Adams Bros. Sales Book Co. is a Kansas corporation, with its principal place of business at 200 Jackson Street, Topeka, Kans.

American Sales Book Co., Inc., is a Delaware corporation, with its principal place of business at 3000 Highland Avenue, Niagara Falls, N. Y.

Autographic Register Co. is a New Jersey corporation, with its principal place of business at 1000 Clinton Street, Hoboken, N. J.

Atlantic Register Co. is a Massachusetts corporation, with its principal place of business at 144 Moody Street, Waltham, Mass.

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Baltimore Sales Book Co. is a Maryland corporation, with its principal place of business at 3120 Frederick Avenue, Baltimore, Md.

Bonnar-Vawter Fanform Co. is a Delaware corporation, with principal place of business at 1717 East Thirtieth Street, Cleveland, Ohio.

Cosby-Wirth Manifold Book Co. is a Minnesota corporation, with its principal place of business located at 628 Stinson Boulevard, Minneapolis, Minn.

Craft Sales Book Co., Inc., is a Pennsylvania corporation, with its principal place of business at 2210 Cambria Street, Philadelphia, Pa.

Egry Register Co. is an Ohio corporation, with its principal place of business at 429 East Monument Avenue, Dayton, Ohio.

W. S. Gilkey Printing Co. is an Ohio corporation, with its principal place of business at 1138 West Ninth Street, Cleveland, Ohio.

Stephen Greene Co. is a Pennsylvania corporation, with its principal place of business at Thirty-fourth and Market Streets, Philadelphia, Pa.

Hamilton Autographic Register Co. is an Ohio corporation, with its principal place of business at 802 Symmes Avenue, Hamilton, Ohio.

Hanna Register Co. is an Indiana corporation, with its principal place of business at Springfield, Ill.

Philip Hano Co., Inc., is a Massachusetts corporation, with its principal place of business at Sargeant Street, Holyoke, Mass.

Lisbon Sales Book Co. is an Ohio corporation, with its principal place of business at Maple Street, Lisbon, Ohio.

Roscoe M. Breeden is an individual, doing business under the firm name of Los Angeles Register and Printing Co., whose principal place of business is 428 Boyd Street, Los Angeles, Calif.

McCaskey Register Co. is an Ohio corporation, with its principal place of business at South Union Avenue, Alliance, Ohio.

The Miami Systems Corporation is an Ohio corporation, with its principal place of business located at 2735 Colerain Street, Cincinnati, Ohio.

National Carbon Coated Paper Co. is a Michigan corporation, with its principal place of business located at Sturgis, Mich.

The Potter Press is a Massachusetts corporation, with its principal place of business located at 515 South Street, Waltham, Mass.

C. W. Potter, Inc., is a Massachusetts corporation, with its principal place of business located at 144 Moody Street, Waltham, Mass.

The Rotary Printing Co. is an Ohio corporation, with its principal place of business located at Norwalk, Ohio.

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Schwabacher-Frey Co. is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at 735 Market Street, San Francisco, Calif.

Shelby Salesbook Co. is an Ohio corporation, with its principal place of business at Shelby, Ohio.

The Snapout Forms Co. is an Ohio corporation, with its principal place of business at Chardon, Ohio.

The Standard Register Co. is an Ohio corporation, with its principal place of business at 626 Albany Street, Dayton, Ohio.

Sunset-McKee Sales Book Co. is a California corporation, with its principal place of business at 2101 Livingston Street, Oakland, Calif.

United Autographic Register Co. is an Illinois corporation, with its principal place of business at 5000 South California Avenue, Chicago, Ill.

The Wallace Press, Inc., is an Illinois corporation, with its principal place of business at 730 West Monroe Street, Chicago, Ill.

PAR. 3. Manufacturing respondents in the regular course of their business in the sale and distribution of sales books and continuous forms, and sales records blanks, cause the same to be shipped and transported from the various points of production in certain respective States through and into other States of the United States. They are in competition among themselves and with jobbers and subjobbers who resell such products to customers except insofar as such competition has been hindered, frustrated, lessened, restricted, restrained or eliminated as alleged in paragraphs 5 and 6 hereof. Respondent association is not engaged in commerce but is engaged in aiding and cooperating with manufacturing respondents in carrying out said unlawful methods as alleged herein, which directly and substantially affect competition among its members.

PAR. 4. The commodity involved here is generally described as "printed stationery" used chiefly for making records of sales and other business transactions. Embraced in such stationery are sales books, continuous forms consisting of multiple sets of business forms for use in billing machines, typewriters, or other office equipment, and autographic register stationery consisting of multiple sets of business forms for use in autographic or credit registers and other business recording machines, all for making hand-written and machine records of various business transactions. Each of the manufacturing respondents produces and sells at least one of the types of stationery described. For convenience, all forms of the three types of the commodity are referred to hereinafter merely as "printed stationery."

PAR. 5. For more than ten years last past, and continuing to the present time, respondents have cooperated, confederated, combined,

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agreed and conspired between and among themselves to organize and maintain, have organized and maintained, and do now maintain an unlawful combination among and between themselves to hinder, frustrate, suppress, lessen, restrain, and eliminate competition in price and otherwise in the sale and distribution of "printed stationery" in the course of their aforesaid commerce among and between the various States.

Pursuant to and in furtherance of the aforesaid cooperation, confederation, combination, agreement, and conspiracy, respondents, in cooperation between and among themselves have—

1. Organized and operated respondent Specialty Accounting Supply Manufacturers Association as an unincorporated, voluntary trade association to promote the mutual interests of the manufacturing respondents and to serve them, and they now use it as an instrument or vehicle for their joint and cooperative purpose and action in hindering, frustrating, suppressing, lessening, restraining, and eliminating competition in price and otherwise in the sale and distribution of "printed stationery" in commerce among and between the various States.

2. Agreed to fix and maintain, and have fixed and do now concertedly maintain prices, terms and sales conditions in the sale of "printed stationery."

3. Attempted to keep up an appearance of genuine competition and made false claims regarding same, in the submission of bids to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions and in the submission of price quotations to buyers of "printed stationery" generally, while in reality they acted collusively between and among themselves in an effort to frustrate and with the effect of frustrating honest rivalry, of avoiding and preventing competition, deceiving purchasing officials, awarding authorities and buyers generally, and of preventing consideration by purchasing officials, awarding authorities and by buyers of "printed stationery" generally, of genuinely competitive bids or price quotations. All of this has been accomplished in part by respondents and groups of respondents who met and discussed bids and prices in advance of the date or dates on which they knew they were to submit bids or price quotations to purchasing officials, awarding authorities of the Federal Government and other governmental units and to buyers of "printed stationery" generally. At such meetings and in such discussions respondents decided and agreed upon the use of plans, schemes or devices by which the one of their number who first received favorable consideration from any prospective purchaser of "printed stationery" would inform other respond-

ents of that fact and all other respondents would then submit to such prospective purchaser or purchasers of "printed stationery" higher but noncompetitive bids or price quotations. The purpose and effect of this procedure was to allocate particular awards or orders to the particular respondents who had first received favorable consideration from any particular prospective purchaser as to any particular prospective purchase or order of "printed stationery," it being understood that each of the other respondents would be compensated in turn by similar and reciprocal treatment whenever one of them initiated or originated favorable consideration on the part of any other prospective purchaser as to any other particular prospective purchase or order of "printed stationery."

4. Agreed to enter into, and have entered into, carried out and are now carrying out, understandings and agreements to the effect that the manufacturing respondents refrain from selling printed stationery to jobbers and subjobbers who fail to observe, adhere to and maintain the prices, terms and conditions of sale as agreed upon and fixed by the manufacturing respondents and jobbers.

5. Agreed to adopt, and have adopted and used and are now using, espionage, coercion and cooperation in dealing with jobbers and subjobbers for the purpose and with the effect of enforcing adherence to the prices, terms, and conditions of sale of "printed stationery" as fixed by agreement and understanding between and among the manufacturing respondents, their jobbers and subjobbers.

6. Given special and valuable inducements in price and otherwise to customers of manufacturers not members of the combination, while at the same time denying and withholding such inducements from customers of the manufacturing respondents, for the purpose and with the effect of diverting trade to themselves from competing manufacturers of "printed stationery" not members of respondents' combination.

7. Operated bogus independents under the sponsorship and direction of respondent American Sales Book Co. and certain other of the manufacturing respondents through outright ownership, financial and contractual affiliations and otherwise.

8. Allocated to and divided among the manufacturing respondents particular lots or pieces of business and the business of particular purchasers of "printed stationery."

9. Exchanged and circulated lists of "recognized" jobbers and dealers of "printed stationery."

10. Entered into cross license arrangements and other licensing arrangements in connection with claims of certain of the manufacturing respondents under patents, pursuant to which arrangements the

manufacturing respondents sought to and did agree with each other that they would uphold and maintain prices, terms and conditions of sales of "printed stationery."

11. Agreed to hold and have held meetings, from time to time, under the auspices and supervision of respondent, O. L. Moore, and other representatives and agents of respondent association, during the course of which and at other times, respondent associations, its officers, directors, and other agents cooperated with and assisted the manufacturing respondents, their jobbers and subjobbers in furthering and carrying out the unlawful acts, practices and methods herein set forth.

12. Agreed to cooperate with each other in utilizing, and have cooperated with each other and in connection therewith utilized, the facilities and offices of the respondent association and respondent, O. L. Moore, and other agents of respondent association, in formulating and cooperatively using "Open Price Plans" and "Reporting Plans," pursuant to which the various manufacturing respondents have advised and informed respondent, O. L. Moore, other agents of respondent association and each other concerning the intimate details of their respective business transactions, including names and addresses of their respective customers, volume of production, sales and shipments, lists of prices to be quoted and charged on current and future sales transactions and the prices obtained on past transactions, which information and advice has in turn been disseminated by respondent O. L. Moore and other agents and employees of respondent association to and among various manufacturing respondents.

13. Reported, filed, or exchanged and are now reporting, filing, or exchanging between or among themselves intimate details of transactions handled by the manufacturing respondents and transactions expected to be handled by the manufacturing respondents, including information as to prices, price lists, bids or price quotations.

14. Opened up books and other records of the manufacturing respondents for examination by their common agents, and reported, filed and exchanged between and among the manufacturing respondents, through common agents and otherwise, information regarding the sales of individual manufacturing respondents, including the prices at which such sales are made for the purpose and with the effect of securing a collective and cooperative comparison and consideration through common agents and otherwise of the prices at which the manufacturing respondents made sales and are making sales with the price quotations previously announced by the same manufacturing respondents.

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PAR. 6. The aforesaid combination, and the doing and performing of the acts and things, and the use of the methods set forth in the preceding paragraphs hereof tend to have, have had, and now have, the effect of depriving the public of the full benefit of competition in commerce among the manufacturing respondents and between and among the manufacturing respondents and between them and their competitors.

PAR. 7. The acts, practices, methods, agreements, and combination of the respondents, as hereinbefore alleged, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the sale of printed stationery in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the sale and distribution of such products and constitute unfair methods of competition and unfair acts and practices in 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 December 11, 1941, issued and served an amended complaint in this proceeding upon respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of said act. After issuance of the said amended complaint and filing of the respondents' answers, the Commission, by order entered herein, granted the motion of respondents' American Sales Book Co., Inc., Autographic Register Co., Baltimore Sales Book Co., Bonnar-Vawter Fanform Co., Cosby-Wirth Manifold Book Co., Egry Register Co., Hanna Register Co., The Potter Press, The Snapout Forms Co., The Standard Register Co., and United Autographic Register Co., for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in the said amended complaint. The Commission also granted the motion of respondents Specialty Accounting Supply Manufacturers Association, O. L. Moore, Acme Register Co., Adams Bros. Sales Book Co., Atlantic Register Co., Craft Sales Book Co., W. S. Gilkey Printing Co., Stephen Greene Co., Hamilton Autographic Register Co., Philip Hano Co., Inc., Lisbon Sales Book Co., Roscoe M. Breden, an individual, doing business under the firm name

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of Los Angeles Register & Printing Co., McCaskey Register Co., The Miami Systems Corporation, National Carbon Coated Paper Co., C. W. Potter, Inc., The Rotary Printing Co., Schwabacher-Frey Co., Shelby Salesbook Co., Sunset-McKee Sales Book Co., and The Wallace Press, Inc., for permission to withdraw their said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said amended complaint except the allegations contained in subparagraph 3 of paragraph 5 of said amended complaint, which they neither admitted nor denied, but stating in said substitute answers that they lacked knowledge of the facts relating to the allegations last referred to. All respondents further waived all intervening procedure and hearing as to said facts and consented that the Commission may, without trial and without the taking of evidence, make and enter its findings as to the facts, including inferences which it may draw therefrom and its conclusions based thereon. Thereupon said substitute admission answers were duly filed in the offices of the Commission. Thereafter this proceeding came on in due course for final hearing before the Commission on the said amended complaint, and the said substitute admission answers 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, Specialty Accounting Supply Manufacturers Association, hereinafter referred to as respondent Association, is an unincorporated, voluntary trade association organized in 1933 to promote the interests of its members. Its headquarters now are and have been for several years, in the offices of its secretary, respondent, O. L. Moore, 208 South LaSalle Street, Chicago, Ill. Said Association serves its members as an instrument or vehicle for their joint and cooperative action. On and since July 1, 1939, its membership has included practically all manufacturers and sellers of sales books and continuous form sales records, stationery, and machines in which such stationery is used, who are located and doing business in this country, 30 of whom are named as respondent in this proceeding. From time to time its membership has included other persons, partnerships, and corporations engaged in like business.

Respondent, O. L. Moore, who does now, and has for several years, managed and directed the affairs of respondent Association, and served as its secretary, does now and has for many years maintained and

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carried on a business of organizing, managing, and directing the affairs of trade associations and groups in various industries, including the manufacturers and sellers of "printed stationery," the commodity with which this proceeding is concerned as it is hereinafter described and defined in paragraph 2 hereof.

The manufacturers of sales books and other forms of "printed stationery" (as it is hereinafter described and defined in par. 2 hereof) named in the caption hereof as respondents, and hereinafter referred to as manufacturing respondents, are more fully described as follows:

Acme Register Co., is a Delaware corporation, with its principal place of business at 413 South Fifth Street, Minneapolis, Minn.

Adams Bros. Sales Book Co., is a Kansas corporation, with its principal place of business at 200 Jackson Street, Topeka, Kans.

American Sales Book Co., Inc., is a Delaware corporation, with its principal place of business at 3000 Highland Avenue, Niagara Falls, N. Y.

Autographic Register Co., is a New Jersey corporation, with its principal place of business at 1000 Clinton Street, Hoboken, N. J.

Atlantic Register Co., is a Massachusetts corporation, with its principal place of business at 144 Moody Street, Waltham, Mass.

Baltimore Sales Book Co., is a Maryland corporation, with its principal place of business at 3120 Frederick Avenue, Baltimore, Md.

Bonnar-Vawter Fanform Co., is a Delaware corporation, with its principal place of business at 1717 East 30th Street, Cleveland, Ohio.

Cosby-Wirth Manifold Book Co., is a Minnesota corporation, with its principal place of business at 628 Stinson Boulevard, Minneapolis, Minn.

Craft Sales Book Co., Inc., is a Pennsylvania corporation, with its principal place of business at 2210 Cambria Street, Philadelphia, Pa.

Egry Register Co., is an Ohio corporation, with its principal place of business at 429 East Monument Avenue, Dayton, Ohio.

W. S. Gilkey Printing Co., is an Ohio corporation, with its principal place of business at 1138 West Ninth Street, Cleveland, Ohio.

Stephen Greene Co., is a Pennsylvania corporation, with its principal place of business at Thirty-fourth and Market Streets, Philadelphia, Pa.

Hamilton Autographic Register Co., is an Ohio corporation, with its principal place of business at 802 Symmes Avenue, Hamilton, Ohio.

Hanna Register Co., is an Indiana corporation, with its principal place of business at Springfield, Ill.

Philip Hano Co., Inc., is a Massachusetts corporation, with its principal place of business at Sargeant Street, Holyoke, Mass.

Lisbon Sales Book Co., is an Ohio corporation, with its principal place of business at Maple Street, Lisbon, Ohio.

Roscoe M. Breeden, is an individual, doing business under the firm name of Los Angeles Register & Printing Co., whose principal place of business is 428 Boyd Street, Los Angeles, Calif.

McCaskey Register Co., is an Ohio corporation, with its principal place of business at South Union Avenue, Alliance, Ohio.

The Miami Systems Corporation, is an Ohio corporation, with its principal place of business located at 2735 Colerain Street, Cincinnati, Ohio.

National Carbon Coated Paper Co., is a Michigan corporation, with its principal place of business located at Sturgis, Mich.

The Potter Press, is a Massachusetts corporation, with its principal place of business located at 515 South Street, Waltham, Mass.

C. W. Potter, Inc., is a Massachusetts corporation, with its principal place of business located at 144 Moody Street, Waltham, Mass.

The Rotary Printing Co., is an Ohio corporation, with its principal place of business located at Norwalk, Ohio.

Schwabacher-Frey Co., is a corporation, with its principal place of business at 735 Market Street, San Francisco, Calif.

Shelby Salesbook Co., is an Ohio corporation, with its principal place of business at Shelby, Ohio.

The Snapout Forms Co., is an Ohio corporation, with its principal place of business at Chardon, Ohio.

The Standard Register Company, is an Ohio corporation, with its principal place of business at 626 Albany Street, Dayton, Ohio.

Sunset-McKee Sales Book Co., is a California corporation, with its principal place of business at 2101 Livingston Street, Oakland, Calif.

United Autographic Register Co., is an Illinois corporation, with its principal place of business at 5000 South California Avenue, Chicago, Ill.

The Wallace Press, Inc., is an Illinois corporation, with its principal place of business at 730 West Monroe Street, Chicago, Ill.

PAR. 2. The commodity involved here, generally described as "printed stationery," is used chiefly in making records of sales and other business transactions. Embraced in such stationery are sales books, continuous forms consisting of multiple sets of business forms for use in billing machines, typewriters, or other office equipment, and autographic register stationery consisting of multiple sets of business forms for use in autographic or credit registers and in other business recording machines, all for making hand-written or machine records of various business transactions. Each of the manufacturing respons-

ents produces and sells at least one of the types of stationery described. For convenience, all forms of the three types of the commodity are referred to hereinafter merely as "printed stationery." "Printed stationery" is an important item in commercial intercourse between and throughout the several States of the United States and the District of Columbia, both as a commodity sold in commerce and as an aid to commerce in many other commodities.

PAR. 3. Manufacturing respondents, in the regular course of their business in the sale and distribution of "printed stationery," sell and cause the same to be shipped and transported from the various points of production in various States into and through other States of the United States. In doing so they are in competition among themselves and with jobbers and subjobbers who resell such products to their respective customers and consumers except insofar as such competition has been hindered, frustrated, lessened, restricted, restrained, or eliminated as found herein.

Respondent Association is not engaged in the sale and shipment of "printed stationery" but it is employed by manufacturing respondents and engaged in aiding and cooperating with said manufacturing respondents in the making of sales and shipments of "printed stationery" and machines in which the same is used in interstate commerce and in carrying out the unlawful acts, practices, policies and methods as found herein and which substantially affect competition among its members and with their competitors.

PAR. 4. For more than ten years last past, and continuing to the present time, respondents have cooperated, confederated, combined, agreed and conspired between and among themselves, to organize and maintain, have organized and maintained, and do now maintain, an unlawful combination among and between themselves to hinder, frustrate, suppress, lessen, restrain, and eliminate competition in price and otherwise in the sale and distribution of "printed stationery" in the course of their aforesaid commerce among and between the various States. Pursuant to, and in furtherance of the aforesaid cooperation, confederation, combination, agreement and conspiracy, respondents, in cooperation between and among themselves, have:

(a) Organized and operated respondent Association as an unincorporated, voluntary trade association to promote the mutual interests of the manufacturing respondents and to serve them, and which they now use as an instrument or vehicle for their joint and cooperative purpose and action in hindering, frustrating, suppressing, lessening, restraining, and eliminating competition in price and otherwise in the sale and distribution of "printed stationery" in commerce among and between the various States.

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(b) Agreed to fix and maintain, and have fixed and do now concertedly maintain, prices, terms and sales conditions in the sale of "printed stationery."

(c) Agreed to enter into, and have entered into, carried out and are now carrying out, understandings and agreements to the effect that the manufacturing respondents refrain from selling printed stationery to jobbers and subjobbers who fail to observe, adhere to, and maintain the prices, terms, and conditions of sale as agreed upon and fixed by the manufacturing respondents and jobbers.

(d) Agreed to adopt, and have adopted and used and are now using, espionage, coercion, and cooperation in dealing with jobbers and subjobbers for the purpose and with the effect of enforcing adherence to the prices, terms, and conditions of sale of "printed stationery" as fixed by agreement and understanding between and among the manufacturing respondents, their jobbers and subjobbers.

(e) Gave special and valuable inducements in price and otherwise to customers of manufacturers not members of the combination, while at the same time denying and withholding such inducements from customers of the manufacturing respondents, for the purpose and with the effect of diverting trade to themselves from competing manufacturers of "printed stationery" not members of respondents' combination.

(f) Operated bogus independents under the sponsorship and direction of respondent American Sales Book Co. and certain other of the manufacturing respondents through outright ownership, financial and contractual affiliations and otherwise.

(g) Allocated to and divided among the manufacturing respondents particular lots or pieces of business and the business of particular purchasers of "printed stationery."

(h) Exchanged and circulated lists of "recognized" jobbers and dealers of "printed stationery."

(i) Entered into cross license agreements and other licensing arrangements in connection with claims of certain of the manufacturing respondents under patents, pursuant to which arrangements the manufacturing respondents sought to and did agree with each other that they would uphold and maintain prices, terms and conditions of sale in "printed stationery."

(j) Agreed to hold and have held meetings, from time to time, under the auspices and supervision of respondent, O. L. Moore, and other representatives and agents of respondent association, during the course of which and at other times, respondent association, its officers, directors, and other agents cooperated with and assisted the manufacturing respondents, their jobbers and subjobbers in furthering and carrying out the acts, practices, policies and methods herein set forth.

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(k) Agreed to cooperate with each other in utilizing, and have cooperated with each other and in connection therewith have utilized, the facilities and offices of the respondent association and respondent, O. L. Moore, and other agents of respondent association, in formulating and cooperatively using "Open Price Plans" and "Reporting Plans," pursuant to which the various manufacturing respondents have advised and informed respondent O. L. Moore, other agents of respondent association and each other concerning the intimate details of their respective business transactions, including names and addresses of their respective customers, volume of production, sales and shipments, lists of prices to be quoted and charged on current and future sales transactions, and the prices obtained on past transactions, which information and advice has in turn been disseminated by respondent O. L. Moore and other agents and employees of respondent association to and among various manufacturing respondents.

(l) Reported, filed, or exchanged and are now reporting, filing, or exchanging between or among themselves the intimate details of particular transactions handled by the manufacturing respondents and transactions expected to be handled by the manufacturing respondents, including information as to prices, price lists, bids, or price quotations.

(m) Opened up books and other records of the manufacturing respondents for examination by their common agents, and reported, filed, and exchanged between and among the manufacturing respondents, through common agents and otherwise, information regarding the sales of individual manufacturing respondents, including the prices at which such sales are made, for the purpose and with the effect of securing a collective and cooperative comparison and consideration through common agents and otherwise of the prices at which the manufacturing respondents made sales and are making sales with the price quotations previously announced by the same manufacturing respondents.

Therefore the Commission infers, concludes, and finds that when the manufacturing respondents filed their current and future price lists, price quotations, and other information explaining or modifying the same with respondent, O. L. Moore, as a common agent, for distribution by him among their respective competitors, filed the intimate details, including prices, of their respective sales transactions for similar distribution by said respondent, Moore, and opened their books and records for examination by their common agents for the purpose and with the effect of making a cooperative comparison between the prices received in actual sales transactions and

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the price lists or price quotations and explanations or modifications of the same previously filed and distributed through said respondent, Moore, as their common agent, there existed under such circumstances an agreement, understanding, or meeting of the minds of the manufacturing respondents that they would and should adhere to the said price lists or price quotations and explanations or modifications of the same so filed and distributed until and unless notice of intention to depart therefrom was given to their competitors by similar filing and distribution of other and different price lists or price quotations, explanations, or modifications of the same.

In addition to the foregoing acts, practices, policies, and methods participated in by all respondents, but pursuant to and in furtherance of the aforesaid agreements, understandings, cooperation, concert, and common course of action of all respondents, respondents, American Sales Book Co., Inc., Autographic Register Co., Baltimore Sales Book Co., Bonnar-Vawter Fanform Co., Cosby-Wirth Manifold Book Co., Egry Register Co., Hanna Register Co., The Potter Press, The Snapout Forms Co., The Standard Register Co., and United Autographic Register Co. have adopted and put into effect the following acts, practices, policies, and methods of competition:

Attempted to keep up an appearance of genuine competition and made false claims regarding same, in the submission of bids to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions and in the submission of price quotations to buyers of "printed stationery" generally, while in reality they acted collusively between and among themselves in an effort to frustrate, and with the effect of frustrating, honest rivalry, of avoiding and preventing competition, deceiving purchasing officials, awarding authorities, and buyers generally, and of preventing consideration by purchasing officials, awarding authorities, and by buyers of "printed stationery" generally, of genuinely competitive bids or price quotations. All of this has been accomplished in part by said respondents and groups of said respondents who met and discussed bids and price in advance of the date or dates on which they knew they were to submit bids or price quotations to purchasing officials, awarding authorities of the Federal Government and other governmental units, and to buyers of "printed stationery" generally. At such meetings and in such discussions respondents decided and agreed upon the use of plans, schemes, or devices by which the one of their number who first received favorable consideration from any prospective purchaser of "printed stationery" would inform other respondents of that fact, and all other respondents would then submit to such prospective purchaser or purchasers of "printed station-

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ery" higher but noncompetitive bids or price quotations. The purpose and effect of this procedure was to allocate particular awards or orders to the particular respondents who had first received favorable consideration from any particular prospective purchaser as to any particular prospective purchase or order of "printed stationery," it being understood that each of the other respondents would be compensated in turn by similar and reciprocal treatment whenever one of them initiated or originated favorable consideration on the part of any other prospective purchaser as to any other particular prospective purchase or order of "printed stationery."

PAR. 5. The aforesaid understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove found, have had, and now have, the tendency and effect of unduly lessening, restricting, restraining, and suppressing competition in the sale and distribution of "printed stationery," and of depriving the public of the full benefit of competition in commerce between and among the manufacturing respondents and between them and their competitors.

CONCLUSION

The acts and practices of respondents as herein found, are all to the prejudice of competitors of respondents, and of the public, and have a dangerous tendency to, and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the sale of "printed stationery" in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in "printed stationery"; and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answers of the respondents, in which answers respondents, American Sales Book Co., Inc., Autographic Register Co., Baltimore Sales Book Co., Bonnar-Vawter Fanform Co., Cosby-Wirth Manifold Book Co., Egry Register Co., Hanna Register Co., The Potter Press, The Snapout Forms Co., The Standard Register Co., and United Autographic Register Co., admit all of the material allegations of fact set forth in said amended complaint, and respondents, Specialty Accounting Supply Manufacturers Association, O. L. Moore, Acme

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Register Co., Adams Bros. Sales Book Co., Atlantic Register Co., Craft Sales Book Co., Inc., W. S. Gilkey Printing Co., Stephen Greene Co., Hamilton Autographic Register Co., Philip Hano Co., Inc., Lisbon Sales Book Co., Roscoe M. Breeden, an individual, doing business under the firm name of Los Angeles Register & Printing Co., McCaskey Register Co., The Miami Systems Corporation, National Carbon Coated Paper Co., C. W. Potter, Inc., The Rotary Printing Co., Schwabacher-Frey Co., Shelby Salesbook Co., Sunset-McKee Sales Book Co., and The Wallace Press, Inc., admit all the material allegations of fact set forth in the said amended complaint, except the allegations contained in subparagraph (3) of paragraph 5 of said amended complaint, which subparagraph they neither admit nor deny, but state in connection therewith that they lack knowledge of the facts relating to the charges therein contained. All respondents waived all intervening procedure and hearing as to said facts and consented that the Commission may, without trial, and without the taking of evidence, make and enter its findings as to the facts, including inferences which it may draw therefrom, and its conclusions based thereon, and issue and serve upon them an order to cease and desist from any methods of competition alleged in the said amended complaint; and the Commission having made its findings as to the facts, and having stated its conclusion that all of the said respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, Specialty Accounting Supply Manufacturers Association, an unincorporated association hereinafter referred to as "respondent Association," its officers, directors, agents, and employees and O. L. Moore, individually, and as an officer of Specialty Accounting Supply Manufacturers Association, his representatives, agents, and employees and the following persons, firms, and corporations, individually, and as members of the Specialty Accounting Supply Manufacturers Association, hereinafter referred to as "manufacturing respondents": Acme Register Co., a corporation; Adams Bros. Sales Book Co., a corporation; American Sales Book Co., Inc., a corporation; Atlantic Register Co., a corporation; Autographic Register Co., a corporation; Baltimore Sales Book Co., a corporation; Bonnar-Vawter Fanform Co., a corporation; Cosby-Wirth Manifold Book Co., a corporation; Craft Sales Book Co., Inc., a corporation; Egly Register Co., a corporation; W. S. Gilkey Printing Co., a corporation; Stephen Greene Co., a corporation; Hamilton Autographic Register Co., a corporation; Hanna Register Co., a corporation; Philip Hano Co., Inc., a corporation; Lisbon Sales Book Co., a corporation; McCaskey Register Co., a corporation; The Mi-

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ami Systems Corporation, a corporation; National Carbon Coated Paper Co., a corporation; The Potter Press, a corporation; C. W. Potter, Inc., a corporation; The Rotary Printing Co., a corporation; Schwabacher-Frey Co., a corporation; Shelby Salesbook Co., a corporation; The Snapout Forms Co., a corporation; the Standard Register Co., a corporation; Sunset-McKee Sales Book Co., a corporation; United Autographic Register Co., a corporation; and The Wallace Press, Inc.; a corporation; their respective officers, agents, representatives, and employees; and Roscoe M. Breeden, an individual, doing business under the firm name of Los Angeles Register & Printing Co., and his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of "printed stationery" for use in making records of sales and other business transactions, including sales books, continuous forms consisting of multiple sets of business forms for use in billing machines, typewriters, or other office equipment, and autographic register stationery consisting of multiple sets of business forms for use in autographic or credit registers and other business recording machines for making handwritten or machine records of various business transactions, or other stationery for similar uses, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any common course of action, 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 others not parties hereto, to do or perform any of the following acts or practices.

1. Establishing, fixing, or maintaining prices, terms, or conditions of sale for "printed stationery," or adhering to, or promising to adhere to, the prices, terms, and conditions of sale so fixed.

2. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of respondent Association, respondent O. L. Moore, or any other medium or agency concerning proposed or future prices, terms, or conditions of sale or concerning bids and prices in advance of the submittal of bids or price quotations to purchasing officials, awarding authorities of the Federal Government or other governmental units, or to any buyer of "printed stationery."

3. Arriving at the amount of any bid or price quotations to be submitted to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions, or to any buyer of "printed stationery" through agreement, understanding, or collusion with other bidders.

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4. Exchanging, distributing, or relaying among manufacturing respondents, information as to bids submitted or to be submitted to purchasing officials of the Federal Government or to awarding authorities of other governmental units or subdivisions or to any buyer of "printed stationery," or submitting bids which are not bona fide, to such officials, agencies, or purchasers, for the purpose, or with the effect, of protecting or favoring any one or more of the manufacturing respondents or of eliminating competitive bidding.

5. Exchanging or circulating among respondent members or through respondent Association or any other medium or central agency, lists of "recognized" jobbers or dealers in "printed stationery," to protect or favor any one or more such jobbers or dealers or restrict the sale of "printed stationery" to jobbers and dealers so listed.

6. Coercing, inducing, or persuading, by espionage, refusal to sell, or other means, or so attempting to coerce, induce, or persuade, jobbers or subjobbers of "printed stationery" to adhere to or maintain the prices, terms, or conditions of sale as fixed by any of the manufacturing respondents and their jobbers or subjobbers.

7. Giving special or valuable inducements in price, or otherwise, to purchasers of "printed stationery" not customers of the respondents herein, while at the same time denying or withholding such inducements or valuable consideration from customers of the respondents, for the purpose, or with the effect, of diverting trade to any of the respondents from other manufacturers or sellers of "printed stationery."

8. Holding out or permitting any printing stationery concern to be held out and advertised as an independent business when, in fact, such concern is owned, operated, or controlled by any of the respondents

9. Allocating or dividing among themselves or anyone, any given lot or piece of business or the business of any given purchaser of "printed stationery" which allocation or division has the tendency or effect of fixing prices or otherwise restricting, restraining, or eliminating competition in the sale and distribution of "printed stationery."

10. Entering into, continuing, or carrying out any licensing or cross-licensing arrangements in connection with claims of any of the manufacturing respondents under patents, for the purpose, or with the tendency or effect, of upholding or maintaining prices, terms, or conditions of sale of "printed stationery."

11. Exchanging, distributing, or relaying among manufacturing respondents or any of them, or through respondent Association, re-

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spondent O. L. Moore, or through any other medium or central agency, price lists or other information showing current or future prices, terms, or conditions of sale, or information showing current or future prices, terms, or conditions of sale of any particular respondent, or bid or price quotations submitted or to be submitted on any prospective piece of business.

12. Exchanging, distributing, or relaying among manufacturing respondents or any of them, or through respondent Association, respondent, O. L. Moore, or any other medium or central agency, information concerning prices charged particular customers or information concerning volume of production, sales, or shipments of "printed stationery" where the identity of the manufacturer, seller, or purchaser can be determined through such information, and which has the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale.

13. Formulating, establishing, putting into operation, continuing, or using in any way, any "open price plan" or "reporting plan" which has the tendency or effect of depriving the public of any benefit of competition in price between and among the manufacturing respondents, or between any of them and any other manufacturer or seller of "printed stationery."

14. Authorizing or permitting the examination of the books and other records of the manufacturing respondents by any agent of the respondents or any of them, to permit or make possible a collective or cooperative consideration, through any common agent of the respondents, of the prices at which any given manufacturing respondent has made sales, is currently making sales, or expects to make sales, and a comparison of the sales with the price quotations previously announced by such manufacturing respondents.

15. Formulating or putting into operation any other practice or plan which has the purpose, or the tendency or effect, of fixing prices for "printed stationery" or otherwise restricting, restraining, or eliminating competition in the sale and distribution of such products.

16. Employing or utilizing respondent, O. L. Moore, or respondent Association or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

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

INDESTRO MANUFACTURING CORP.

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

Docket 4006. Complaint, Feb. 1, 1940—Decision, Sept. 10, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of automobile tools—

Represented and described certain wrenches as being made from "Forged Alloy Steel," "Drop Forged Alloy Steel," "Special Alloy Steel," and "Carbon Alloy Steel" through application of such terms thereto in catalogues, price lists, and other advertising material, and on labels attached thereto;

The facts being that the quantity of chromium, vanadium, nickel, molybdenum and copper present in its said products was not sufficient, either alone or in combination, to have any appreciable effect upon the properties thereof or the steel contained therein, or to constitute "alloy steel," i. e., carbon steel to which such alloying elements have been added in quantities sufficient to affect its properties; and the small quantities of elements aforesaid found in its products indicated that they were residual only, resulting from the method of processing which included, probably, use of some alloy scrap;

With tendency and capacity to mislead and deceive the purchasing public into the mistaken belief that said wrenches were made from alloy steels— for which there is a decided preference in the industry, and among dealers and the purchasing public over those made from plain carbon steels— 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.

Before *Mr. Edward E. Reardon* and *Mr. Andrew B. Duvall*, trial examiners.

Mr. William M. King, *Mr. James I. Rooney* and *Mr. S. F. Rose* for the Commission.

Mr. Albert G. McCaleb and *Mr. Arthur Nelson Cornell*, of Chicago, Ill., and *Mr. James H. Littlehales*, 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 Indestro Manufacturing 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

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

PARAGRAPH 1. The respondent, Indestro Manufacturing Corporation, is a corporation, organized under the laws of the State of Illinois, with its principal office and place of business located at 2649 North Kildare Avenue, in the city of Chicago in said State of Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of automobile tools, including wrenches of various sizes and descriptions. Said products are manufactured in respondent's factory located in the city of Chicago, State of Illinois. Respondent causes said products, when sold, to be transported from its factory situated in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. At all times herein mentioned respondent has maintained a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and to induce the purchase of its said products, the respondent issues and distributes among prospective purchasers catalogues, price lists, and other advertising material purporting to be descriptive of respondent's products. Among the products so advertised are certain wrenches which are represented and described as being manufactured from "Forged Alloy Steel," "Drop Forged Alloy Steel," "Special Alloy Steel" and "Carbon Alloy Steel." Respondent also causes such descriptive terms to be stamped or embossed upon such wrenches.

Through the use of such descriptive terms in its advertising and on its said products the respondent represents that such tools are manufactured from "alloy steel."

PAR. 4. The foregoing representations are false and misleading. In truth and in fact, respondent's wrenches are not manufactured from alloy steel but are manufactured from what is known as common steel or carbon steel. The term "alloy steel" is understood by the steel industry, the trade, and the purchasing public as denoting carbon steel to which have been added certain other elements such as nickel, tungsten, molybdenum, vanadium and chromium. Such elements are added to give the finished product certain additional properties and attributes, such as hardness and toughness. None of the aforesaid elements or any similar element is added to the steel used by respondent and the products made from such steel cannot properly be represented as having been manufactured from alloy steel.

There is a decided preference in the steel industry and among dealers and the purchasing public for tools made from alloy steel over tools made from common or carbon steel.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations with respect to its said 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 that respondent's products possess properties and qualities which they do not in fact possess. As a result of such erroneous belief, the purchasing public has been induced to and does purchase a substantial quantity of respondent's products.

PAR. 6. The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 1st day of February, A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Indestro Manufacturing Corp., a corporation, named in the complaint as "Indestro Manufacturing 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 the filing of respondent's answer thereto testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent waived the introduction of testimony, filing of the trial examiners' report upon the evidence, oral argument and the filing of briefs, and agreed that the record be considered closed and submitted to the Commission for final disposition.

Thereafter this proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint; and the Commission having duly considered the same and now being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Indestro Manufacturing Corporation, is a corporation, organized under the laws of the State of Illinois, with its principal office and place of business located at 2649 Kildare Avenue, in the city of Chicago, in the State of Illinois.

PAR. 2. Respondent now is, and for many years last past has been, engaged in the manufacture, sale, and distribution of automobile tools, including wrenches of various sizes and descriptions. Said products are manufactured in respondent's factory, located in the city of Chicago, State of Illinois. Respondent causes said products, when sold, to be transported from its factory situated in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in its said products in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, and to induce the purchase of its said products, the respondent issued and distributed among prospective purchasers, catalogues, price lists, and other advertising material purporting to be descriptive of respondent's products. Among the products so advertised were wrenches which were represented and described as being manufactured from "Forged Alloy Steel," "Drop Forged Alloy Steel," "Special Alloy Steel," and "Carbon Alloy Steel." Respondent also caused such descriptive terms to be stamped or embossed upon such wrenches. Such practices were discontinued by respondent prior to the issuance of the complaint, but after the respondent had been contacted by the Commission with reference thereto.

PAR. 4. The use by the respondent of the term "Alloy Steel" in describing and designating its products, is false, deceptive, and misleading. The term "Alloy Steel" is understood by the steel industry, the trade, and the purchasing public as denoting carbon steel to which alloying elements, such as nickel, tungsten, molybdenum, vanadium, copper, chromium, and other alloying elements have been added in quantities sufficient to affect the properties of the steel. The addition of such alloys in sufficient quantities, either singly or in combination, gives the steel properties not found in plain carbon steel. Carbon steel and carbon steel products generally contain traces of these various alloys, due to the method of processing, particularly where alloyed scrap has been added in such processing. The steel used by the respondent in the manufacture of the products herein described, is purchased by it under the specification of "1045 S. A. E. Steel," which indicates a standard for carbon steel adopted by the Society

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of Automotive Engineers and is so understood and considered by the industry and the trade.

Certain of respondent's products represented and designated by it as "Forged Alloy Steel" and "Drop Forged Alloy Steel" were analyzed by the Bureau of Standards and were found to contain the following elements in the percentages set out as follows:

Commission's Exhibit 3, designated "Forged Alloy Steel"

	Percent
Carbon.....	0.48
Chromium.....	.09
Vanadium, less than.....	.01
Nickel.....	.10
Molybdenum, less than.....	.01
Copper.....	.07

Commission's Exhibit 5, designated "Drop Forged Alloy Steel"

	Percent
Carbon.....	0.47
Chromium.....	.06
Vanadium, less than.....	.01
Nickel.....	.11
Molybdenum, less than.....	.01
Copper.....	.13

Commission's Exhibits 6a, 6b, and 6c, designated "Drop Forged Alloy Steel"

	Percent
Carbon.....	0.47
Chromium.....	.08
Vanadium, less than.....	.01
Nickel.....	.18
Molybdenum, less than.....	.01
Copper.....	.13

The quantity of chromium, vanadium, nickel, molybdenum, and copper found to be present in said products is not sufficient, either alone or in combination, to have any appreciable effect upon the properties of said products or the steel contained therein, and said elements are not present in sufficient quantities to constitute an alloy steel product. The small quantities of such alloys present in respondent's products indicate that they are residual only, and result from the method of processing, which probably included the use of some portions of alloyed scrap.

There is a decided preference in the steel industry, among dealers and the purchasing public, for wrenches and tools of various sorts made from alloy steels, over such products made from plain carbon steels.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations with respect to its said prod-

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ucts has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and that respondent's products possessed properties and qualities which they did not in fact possess. As a result of such erroneous belief, the purchasing public has been induced to, and did, purchase a substantial quantity 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, answer of the respondent, testimony and other evidence in support of the complaint, taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and brief filed 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, Indestro Manufacturing 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 wrenches and other steel products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "alloy" or any other word of similar import and meaning, either alone or in combination with any other word or words, in branding, advertising, or otherwise describing, designating or referring to its wrenches or any other steel products which are made from carbon steel to which there has not been added alloy elements such as nickel, tungsten, molybdenum, vanadium, chromium, copper, or any other alloying element, either singly or in combination, in quantities sufficient to affect the properties of the steel, and to give it specific properties not found in plain carbon steel.

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
**LOUIS GLASSER, TRADING AS PARAMOUNT 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 4521. Complaint, Dec. 16, 1941¹—Decision, Sept. 10, 1942

Where an individual, engaged in interstate sale and distribution of knitting yarns—

(a) Made use in catalogs and color charts, sample books and other printed and written material, and on labels attached to his products, of such terms as "Luster Shetland," "Shetland Floss," and "Sporting Angora," understood by a substantial portion of the purchasing public to mean yarns made from the wool of sheep grown on the Shetland Islands and the adjacent mainland of Scotland, and from the hair of the Angora goat, respectively;

The facts being said "Shetland" yarn was made entirely of domestic wool, and said "Sporting Angora" contained about 80 percent domestic wool and 20 percent rabbit hair;

(b) Misrepresented certain yarns designated by such trade names as "Cobble Tweed," "Ombre Tweed," "Cravenette," "Petite Boucle," "Heather Worsted," and "Paramount 8013" with words "All Cotton" on its label, through failure to disclose their content of rayon which, when made to simulate silk, wool, or cotton, is practically indistinguishable therefrom;

(c) Falsely represented that his products were sold direct to consumers at wholesale prices substantially lower than retail prices at which similar yarns were usually sold to the consuming public by others, through circulation of such statements as "We are the sole distributors of the Paramount brand yarns;—the finest quality yarns obtainable;—sold at wholesale prices direct to the consumer";

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the constituent fibers of said products and as to said individual's business status, thereby inducing it to purchase substantial quantities of products concerned:

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. Donovan Divet for the Commission.

Mr. S. Robert Israel, of New York City, for respondent.

AMENDED COMPLAINT

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

¹ Amended.

Trade Commission having reason to believe that Louis Glasser, individually, and trading as Paramount 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Louis Glasser, is an individual, trading as Paramount Yarn Co., with his office and principal place of business located at 362 Grand Street, 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 said business, and for the purpose of inducing the purchase of his said products, the respondent has engaged in the practice of falsely representing the constituent fiber or material of which his products are made, such false representations being made by means of statements and legends appearing in catalogs, color charts, sample books, and other printed and written material, and on labels attached to such products.

Typical of the aforesaid practice is the use by respondent of the words "Lustre Shetland" and "Shetland Floss" to designate and describe certain of his yarns which are not composed in whole or in part of wool from the Shetland sheep raised on the Shetland Islands or the adjacent mainland of Scotland.

The word "Shetland" when applied to wool or yarn for many years has had and now has in the minds of the purchasing and consuming public generally a definite and specific meaning, to wit: Wool taken from a breed of sheep known as Shetland sheep raised on the Shetland Islands and on the adjacent mainland of Scotland. For many years there has been and there now is a preference on the part of a substantial number of the purchasing public for Shetland wool and yarn.

A further example of respondent's practice is the use of the words "Sporting Angora" to designate and describe yarns having the appearance of wool, which are not composed of wool from the Angora goat but are composed of other wool and of rabbit hair. The word

"Angora" has long been understood by the purchasing public as denoting fiber made entirely from the hair or wool of the Angora goat and when such term or simulation thereof is used to designate or describe a product having the appearance of wool, such term is understood by the purchasing public as denoting a product made entirely from the hair of the Angora goat. For many years there has been and there is now a preference on the part of a substantial number of the purchasing public for Angora wool and yarn.

PAR. 4. Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk, wool, or cotton. When manufactured to simulate silk it has the appearance and feel of silk; when manufactured to simulate wool it has the appearance and feel of wool; and when manufactured to simulate cotton it has the appearance and feel of cotton. By reason of these qualities rayon, when manufactured to simulate wool, silk, or cotton, and not designated as rayon, is by the purchasing public practically indistinguishable from wool, silk, or cotton, as the case may be. Products made of rayon are accepted by the purchasing public as silk, wool, or cotton, even though such products may not be designated by terms representing that they are silk, wool, or cotton.

The respondent sells and distributes yarns containing rayon without disclosing the rayon content of such products. Among such products are yarns referred to by respondent as "Cobble Tweed," "Cravenette," "Petite Boucle," "Heather Worsted," "Ombre Tweed," "Boucle," "Paramount 8013," and "Paramount 88." All of said yarns contain substantial percentages of rayon which has been manufactured so as to simulate in appearance wool, silk, or cotton, or a mixture of wool and silk, and these yarns are believed by the purchasing public to be wool, silk, or cotton, or a mixture of wool and silk, respectively. The said yarn, Paramount 8013, is labeled by respondent "All Cotton" although in truth and in fact it is composed of approximately 92 percent cotton and 8 percent rayon. The said yarn, Paramount 88, is labeled by the respondent "90 percent cotton and 10 percent rayon," whereas in truth and in fact said yarn is composed of 83 percent cotton and 17 percent rayon.

PAR. 5. In the course and conduct of his said business respondent delivers to customers and prospective customers a circular letter which contains the following statement:

We are the sole distributors of the Paramount Brand Yarns;—the finest quality yarns obtainable;—sold at wholesale prices direct to the consumer.

By the use of the said statement and others of similar import and meaning, not herein specifically set forth, the respondent represents

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to said members of the consuming public that his products are sold directly to consumers at wholesale prices substantially lower than those at which similar yarns are usually sold to the consuming public by other persons, firms, and corporations engaged in the sale of such yarns. Such statement is false and misleading. In truth and in fact respondent's dealings as a wholesaler are confined to transactions with retailers of knitting yarns in New York City and its immediate vicinity and only a small percentage of his sales are wholesale transactions; the prices at which respondent's said yarns are sold to members of the consuming public are not substantially lower than those charged by other persons, firms, and corporations when selling similar yarns to the consuming public and are not wholesale prices.

PAR. 6. 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 and with respect to respondent's business status. As a result thereof the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 24, 1941, issued and subsequently served its complaint in this proceeding on the respondent, Louis Glasser, individually, and trading as Paramount Yarn 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 filing of respondent's answer to said complaint, the Commission, on December 16, 1941, issued and subsequently served its amended complaint upon said respondent, charging him with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Thereafter, testimony and other evidence in support of, and in opposition to, the allegations of said amended 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, this proceeding regularly came on for final hearing before

the Commission on the said amended complaint, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

• FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Louis Glasser, is an individual, trading as Paramount Yarn Co., with his office and principal place of business located at 362 Grand Street in the city of New York, State of New York. Respondent is now, and for several years last past has been, engaged in the sale and distribution of various grades and types of knitting yarns. Respondent causes his said products, when sold, to be transported from his place of business in the State of New York to the purchasers thereof located in various other States of the United States. 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.

PAR. 2. In the course and conduct of his said business and for the purpose of inducing the purchase of his said products, the respondent has engaged in the practice of falsely representing the constituent fiber or material from which his products are made, such false representations being made by means of statements and legends appearing in catalogs, color charts, sample books, and other printed and written material, and on labels attached to such products.

Among and typical of the aforesaid practices, is the use by respondent of the words "Lustre Shetland" and "Shetland Floss" to designate and describe certain of the yarns sold and distributed by him. The word "Shetland" and the terms "Shetland Floss" and "Lustre Shetland," when applied to yarns, are understood by a substantial portion of the purchasing public to mean yarns made from the wool of Shetland sheep grown on the Shetland Islands and on the adjacent mainland of Scotland. As a matter of fact, respondent's product to which these terms are applied is made entirely of domestic wool.

Another example of respondent's practice is the use of the words "Sporting Angora" to designate or describe certain yarns sold and distributed by him. The term "Angora" when applied to knitting yarns is understood by a substantial portion of the purchasing public to mean yarn made from the hair of the Angora goat. The product so designated by respondent contains in fact approximately 80 percent domestic wool and 20 percent rabbit hair.

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In purchasing products represented as, or purporting to be made of, Shetland wool or hair of the Angora goat, members of the public have a preference for the genuine article, rather than a substitute for, or simulation of, the genuine article.

PAR. 3. In addition to the above-described acts and practices, the respondent also sells and distributes yarns containing rayon, without disclosing the rayon content of such products. Rayon is a chemically manufactured fiber which can be so made as to closely simulate silk, wool, or cotton. When manufactured to simulate silk, it has the appearance and feel of silk; when manufactured to simulate wool, it has the appearance and feel of wool; and when manufactured to simulate cotton, it has the appearance and feel of cotton. By reason of these qualities, rayon, when manufactured to simulate wool, silk, or cotton, and not designated as rayon, is by the purchasing public practically indistinguishable from wool, silk, or cotton, as the case may be, and the failure of respondent to disclose the rayon content of the yarns containing that product has resulted in the purchase of such yarns by a substantial portion of the purchasing public under the erroneous impression that they were composed of the genuine products simulated.

Typical of this practice of failure to disclose rayon content, is the use of trade names, such as "cobble tweed," "ombre tweed," "cravenette," "petite boucle," and "heather worsted" to designate or describe yarns composed in whole or in part of rayon. In addition to the above practices, the respondent also sells and distributes a yarn product designated "Paramount 8013," which contains the statement "All Cotton" on its label. In truth and in fact a substantial portion of this product is composed of rayon.

PAR. 4. In the course and conduct of his business, respondent delivers to customers and prospective customers a circular letter which contains the following statement:

We are the sole distributors of the Paramount brand yarns;—the finest quality yarns obtainable;—sold at wholesale prices direct to the consumer.

By the use of said statement and others of similar import and meaning not herein specifically set forth, the respondent represents to said members of the consuming public that his products are sold directly to consumers at wholesale prices substantially lower than the retail prices at which similar yarns are usually sold to the consuming public by other persons, firms, and corporations engaged in the sale of such yarns. In truth and in fact respondent does not sell his said yarns to members of the consuming public at wholesale prices or at prices which are substantially lower than those charged by

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other persons, firms, and corporations when selling similar yarns to the consuming public at retail prices.

PAR. 5. The use of acts and practices of the respondent as herein described, including the failure to disclose that respondent's products contain rayon, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers or materials from which respondent's products are made and with respect to respondent's business status. As a result thereof the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, 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 brief filed by counsel for the Commission; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Louis Glasser, an individual, trading as Paramount Yarn Co., or trading under any other name, his representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of knitted yarns in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Angora" or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of hair of the Angora goat; *Provided, however*, That in the case of a product composed in part of the hair of an 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 equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

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2. Using the word "Shetland" or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland; *Provided, however,* That in the case of a product composed in part of wool of Shetland sheep 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.

3. Advertising, offering for sale, or selling products composed in whole or in part of rayon, without clearly disclosing such rayon content, and when products are composed in part of rayon and in part of other fibers or materials, all such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

4. Representing that the respondent sells direct to the consumer at wholesale prices when in fact the prices so charged are substantially the same as retail prices charged by other distributors for products of like kind and quality, or when the prices so charged are substantially higher than the prices at which dealers and jobbers purchase said products from the respondent.

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

It is further ordered, That no provision of this order to cease and desist 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 rules and regulations promulgated thereunder.

IN THE MATTER OF
NORFOLK MATTRESS 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 4488. Complaint, Apr. 16, 1941—Decision, Sept. 14, 1942

Where a corporation, engaged in the manufacture and interstate sale of mattresses, pillows, bedsprings, and studio couches—

Branded and labeled its said products "Dr. Ezera Storm" or "Dr. Ezera Storm's" and made use of such designation in referring collectively thereto in catalogs and on display cards which it furnished to the retail trade for distribution among the purchasing public, where it also described them as "Dr. Ezera Storm's Supreme Quality Sleep Products," and made such statements as "Dr. Ezera Storm's Sleep Products are built for better sleep * * * provide nerve-soothing, body relaxing comfort from a health standpoint," "You get correct back support, and good seating comfort with the Dr. Storm Sleep Sofa," and "In the Dr. Storm line you get * * * the advantages of products designed from a 'Health and family welfare' standpoint," etc.;

The facts being there had never been a "Dr. Ezera Storm" or "Dr. Storm" who originated, designed, or supervised the construction of, or furnished scientific advice or services in connection with, the design or construction of said products; the name was merely a trade name coined by it or its predecessor; and, except for the fact that certain of the ticking used by it was purchased from a textile manufacturer who treated it to a process—said to make it resistant to germ and bacteria growth—developed by a doctor connected with a third concern which apparently licensed use thereof by textile manufacturers, no connection of any doctor with any materials used by it in its manufacture was shown;

With effect of causing a substantial portion of the purchasing public to believe that said products had been designed, approved, or recommended by a doctor, whereby, because of such mistaken belief, it purchased substantial quantities of such products:

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

Before *Mr. Andrew B. Dwall*, trial examiner.

Mr. Morton Nesmith and *Mr. Carrel F. Rhodes* for the Commission.

Broudy & Broudy, of Norfolk, Va., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Norfolk Mat-

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

PARAGRAPH 1. The respondent, Norfolk Mattress Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business located in the city of Norfolk, State of Virginia.

Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of mattresses, springs, pillows, and studio couches which it brands and labels as "Dr. Ezera Storm," in commerce between and among the several States of the United States, and in the District of Columbia.

Said respondent being engaged in the business, as aforesaid, caused and still causes said products, when sold, to be transported from its principal place of business in the city of Norfolk, in the State of Virginia, to purchasers thereof located in States of the United States other than the State of Virginia, and in the District of Columbia. For several years last past said respondent has maintained a course of trade in the aforesaid products so manufactured, sold, and distributed by it in commerce between and among the several States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of its business, and for the purpose of inducing the purchase of its products, the respondent has furnished advertising matter, such as catalogs and display cards, to its retail trade, who in turn distribute such advertising matter among the purchasing public generally. In all of such advertising literature respondent's products are collectively referred to as "Dr. Ezera Storm's Supreme Quality Sleep Products." The mattress is designated as "Dr. Ezera Storm's Tru-Rest"; the springs as "Dr. Storm's Coil Springs"; the couch as "Dr. Ezera Storm's Studio Couch"; and the pillows as "Dr. Ezera Storm's Pillows."

PAR. 3. Through the use of the term "Dr." as part of the collective name for its aforesaid products and as part of the trade name for each of said products, the respondent has represented, either directly or through implication, that such products were made in accordance with the design of, or under the supervision of, a doctor, and has further represented, either directly or by implication, that such products contain special or scientific features which are the result of medical advice or services.

PAR. 4. In truth and in fact the mattresses, springs, studio couches, and pillows which are labeled, branded, and advertised with the

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name "Dr. Ezera Storm" were not made in accordance with the design of or under the supervision of a doctor, and do not contain special or scientific features which are the result of medical advice or services.

PAR. 5. The acts and practices of the respondent as herein detailed have a tendency and capacity to mislead its own retail customers, and also many consumer purchasers into the mistaken and erroneous belief that such products have been designed and constructed by doctors or others with a special or scientific knowledge, and by reason thereof possess features not common to the ordinary mattresses, springs, couches, and pillows. In consequence of such mistaken and erroneous belief, a substantial number of the purchasing public have purchased respondent's aforesaid products.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission 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, 1941, issued and subsequently served its complaint in this proceeding on respondent, Norfolk Mattress Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of and in opposition to the allegations of the 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, 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, Norfolk Mattress Co., Inc., is a corporation, organized, existing, and doing business under and by virtue

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of the law of the State of Virginia, with its principal office and place of business in Norfolk, Va. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of mattresses, pillows, bedsprings, and studio couches which it brands or labels "Dr. Ezera Storm" or "Dr. Ezera Storm's."

PAR. 2. Respondent has caused, and causes, the aforesaid products, when sold, to be transported from its place of business in Norfolk, Va., to purchasers thereof located in States of the United States other than the State of Virginia and in the District of Columbia, and respondent has maintained and maintains, 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. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said products, respondent has furnished advertising matter such as catalogs and display cards to its retail trade, which catalogs and display card are in turn distributed among members of the purchasing public. In such advertising literature respondent's products are collectively referred to, designated, or described as "Dr. Ezera Storm's Supreme Quality Sleep Products" and are individually labeled, referred to, or described as "Dr. Ezera Storm" mattresses, "Dr. Ezera Storm's Tru-Rest" mattresses, "Dr. Ezera Storm's Sunset" mattresses, "Dr. Ezera Storm" pillows, "Dr. Storm Coil Spring," and "Dr. Ezera Storm's" studio couches.

In its advertising pamphlets and material respondent has used, and uses, statements such as:

Dr. Ezera Storm Sleep Products are built for better sleep. They are honest products, built to provide nerve-soothing, body-relaxing comfort from a health standpoint.

* * * * *

Few people realize the tremendous importance of "good sleep" in relation to physical and mental health. The four essentials of life, in the order of their importance are Air, Sleep, Water and Food.

Men have gone 70 days without food, but without sleep, insanity comes in five days and death in seven. The mattress, and its foundation, the bed spring, are the tools given to men to assist Nature in nightly rebuilding your body. The quality of sleep regulates the clearness with which you think, and determines the efficiency with which you work.

* * * * *

You get correct back support, and good seating comfort with the Dr. Storm Sleep Sofa.

* * * * *

For twenty-seven years, Dr. Ezera Storm Sleep Products have represented maximum value to the purchaser, so in the Dr. Storm line you get not only the advantages of products designed from a "health and family welfare" standpoint, but you also get these products at no premium in price over ordinary sleep equipment.

PAR. 4. There is not now, and never has been, a "Dr. Ezera Storm" or a "Dr. Storm" who originated, designed, or supervised the construction of respondent's said products or who furnished scientific advice or services in connection with the design or construction of respondent's products. The name "Dr. Ezera Storm" is merely a trade name coined by respondent corporation or its predecessors for use on or in connection with its aforesaid products, and neither the respondent nor its predecessors, corporate or individual, knew or had in their employ or as a stockholder or other party in interest, any person by the name of Dr. Ezera Storm.

Certain of the ticking used by respondent in the manufacture of some of its products is purchased from a textile manufacturer and is by that manufacturer treated by a process said to make it resistant to germ and bacteria growth, this process being one developed by a doctor connected with a third concern which apparently licenses textile manufacturers to use such process. No connection of any doctor with the design or manufacture of respondent's products has been shown; and, except to the extent above stated, no connection of any doctor with any materials used by respondent in the manufacture of its products has been shown.

PAR. 5. The respondent introduced the testimony of certain furniture dealers, an interior decorator, and managers of apartments or rooming houses (most of whom were and had been well acquainted with respondent and its business over a long period of years) to the general effect that the use by respondent of the name "Dr. Ezera Storm" in its labels on and descriptions of its products did not mean to them that such products were designed or approved by a doctor, and that they considered the designation "Dr. Ezera Storm" merely as the trade name of respondent for its products. The respondent also made proffers of proof by some of its dealer witnesses (which proffers have been given full consideration in this proceeding) that in the course of selling respondent's products to members of the consuming public they had not found that the designation "Dr. Ezera Storm" caused members of the purchasing public to believe that respondent's products were designed or approved by a doctor.

The Commission finds, however, from the testimony of consumer witnesses, that the various "Dr. Ezera Storm" and "Dr. Ezera Storm's" labels on and designations of respondent's products have the capacity and tendency to, and do, in fact cause a substantial por-

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tion of the purchasing public to believe that respondent's products have been designed, approved, or recommended by a doctor.

In consequence of such mistaken and erroneous belief, engendered as aforesaid, a substantial number of members of the purchasing public have purchased 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, testimony 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 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, Norfolk Mattress Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of mattresses, pillows, bedsprings, couches, and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "Doctor," or the abbreviation "Dr.," or any simulation thereof, either alone or in connection with any other word or words, to designate, describe, or refer to any mattresses, pillows, bedsprings, couches or other products not designed, approved, or recommended by a doctor; or otherwise representing in any manner that any product not designed, approved, or recommended by a doctor has been designed, approved, or recommended by a doctor.

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

UNIFORM MANUFACTURERS EXCHANGE, INC., ITS OFFICERS, BOARD OF DIRECTORS, AND MEMBERS, ET AL.

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

Docket 4712. Complaint, Feb. 25, 1942—Decision, Sept. 15, 1942

Where 23 concerns, engaged in the manufacture, sale, and distribution of uniforms, overcoats and other apparel commonly worn by doormen, bellboys, porters, chauffeurs, and others similarly employed, but excepting policemen and firemen; doing a substantial portion of all business of the industry concerned, particularly in the metropolitan area of New York City, and in competition with one another and with others, except insofar as competition had been lessened or restrained and potential competition forestalled by the acts, practices and policies below set forth; along with their incorporated Exchange or trade association, and the officers and directors thereof—

Entered into and carried out agreements, understandings and conspiracies among themselves to suppress competition in the manufacture, sale and delivery of their products; and in pursuance thereof—

- (a) Organized their said Exchange to control and regulate their business, and thereafter adopted and maintained a cost guide and Manual to govern manufacture and distribution of their said uniforms which (1) required that the price of cloth in any garment made by them should be figured at the market or replacement cost and not at the cost to the purchaser; (2) fixed a standard shrunk net yardage scale for their various products; an average cutting cost; material cost for trimmings, findings, sewings, fronts, pockets, and linings; standard labor costs in detail; minimum overhead costs; and selling terms; and (3) required a member who bid below said Manual cost to submit a revised bid at least 5 percent higher than his original bid;
- (b) Reported to their said Exchange the names of all members who failed to abide by the overhead charges and other items covered by said Manual and by the rules and regulations of the Exchange; and set up and maintained an Arbitration Board or Committee as a disciplinary and punitive agency to enforce the provisions of said Manual, with authority to impose fines, suspend and expel members who failed or refused to comply with the rules and regulations of said Exchange, and otherwise to enforce the same, subject only to the review of a Chairman whose decision was final; and, for that purpose, allowed the examination of the books and records of the respective members by said Committee; and
- (c) Made use of other means to suppress and restrain competition among their members, and through said arbitrary fixing of costs and conditions of sale by their Manual, as above described, and their adherence thereto, fixed minimum prices and terms at which their uniforms and garments were to be sold, with tendency and effect of fixing and regulating prices for such merchandise;

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With effect of unreasonably suppressing and restraining competition in the manufacture, sale and delivery of said products, and depriving the purchasing public of the advantage of competitive prices, terms and conditions in purchase thereof, and of otherwise operating as a restraint upon fair competition in such trade and industry, and particularly between members of said Exchange:

Held, That such acts and practices were all to the prejudice of the public; had a dangerous tendency to hinder and prevent competition between and among said members; placed in them the power to enhance and control prices, terms and conditions in connection with manufacture, sale and delivery of their products; had a dangerous tendency to create in said members a monopoly in said products; unreasonably restrained commerce therein; and constituted unfair methods of competition in commerce.

Mr. George W. Williams for the Commission.

Mr. Elias Lieberman, of New York City, for respondents, with the exception of Fisher-Mair Uniform Co., represented by *Mr. F. Murray Cohen*, of New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter particularly described, designated and referred to as respondents, 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, Uniform Manufacturers Exchange, Inc., is an incorporated association, organized on or about April 20, 1934, under and by virtue of the laws of the State of New York with its office at 112 East Nineteenth Street, New York, N. Y., and hereinafter referred to as respondent "Exchange."

The following named individuals are officers of said respondent Exchange and as such officers, and individually, are designated as respondent herein; George Appel, president; Howard V. Smith, Sr., vice president; I. Charles Bernhard, secretary; Elias Goldstein, treasurer.

The following-named individuals, together with said officers, are members of, and constitute, the board of directors of said Exchange, and as such directors, and individually, are designated as respondents herein: T. A. DuBois, Arthur Stone, and E. S. Smith.

Respondent Exchange is the successor of a voluntary unincorporated association formed for the same purposes as respondent Exchange.

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The membership of said respondent Exchange is made up of numerous corporations, partnerships, firms, and individuals, engaged in the manufacture, sale, and distribution of uniforms, overcoats, and other articles of wearing apparel commonly worn by policemen, firemen, doormen, bell boys, porters, chauffeurs, and others engaged in similar employment.

PAR. 2. The following members of respondent Exchange are named as respondents herein and hereinafter sometimes referred to as respondent members: All-Bilt Uniforms, 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 147 Fulton Street, New York, N. Y.

S. Appel & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 18 Fulton Street, New York, N. Y.

Bernhard, Schrag & Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 18 West Eighteenth Street, New York, N. Y.

Brooks Uniform Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1140 Sixth Avenue, New York, N. Y.

I. Buss, 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 84 Fifth Avenue, New York, N. Y.

Walter Cahn Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 237 Lafayette Street, New York, N. Y.

Stone Uniform Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 9 East Nineteenth Street, New York, N. Y.

Uniforms By Ostwald, 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 18 East Sixteenth Street, New York, N. Y.

The Joseph F. Webber Uniform 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 273 Fifth Avenue, New York, N. Y.

Wender & Goldstein Uniform Service 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 387 Fourth Avenue, New York, N. Y.

Z. & O. Uniform Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 45 East Twentieth Street, New York, N. Y.

Russell Uniform Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1600 Broadway, New York, N. Y.

B. Schellenberg & Sons, is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 72 Willoughby Street, Brooklyn, N. Y.

Smith-Gray Corporation, is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 740 Broadway, New York, N. Y.

A. DuBois Son, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York with its office and principal place of business at 17 Union Square, West, New York, N. Y.

L. P. Maher, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 331 Fourth Avenue, New York, N. Y.

Merson Clothes, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 254 Canal Street, New York, N. Y.

Charles Palley and Abraham Cebulsky, are individuals and copartners, trading as Acme Uniform Co., with their office and principal place of business at 817 Broadway, New York, N. Y.

Charles Mitchell and Paul Perkins, are individuals and copartners, trading as Mitchell & Perkins, with their office and principal place of business at 260-262 West Forty-first Street, New York, N. Y.

John A. Hughes and William A. Thomas, are individuals and copartners, trading as Hughes & Thomas, with their office and principal place of business at 53 East Nineteenth Street, New York, N. Y.

L. M. Barth, is an individual, with his office and principal place of business at 257 Fourth Avenue, New York, N. Y.

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Arthur R. Meyers, is an individual, trading as National Uniform Co., with his office and principal place of business at 41 East Twenty-eighth Street, New York, N. Y.

Albert T. Scafati, is an individual, trading as A. T. Scafati Corporation, with his office and principal place of business at 226 West Forty-first Street, New York, N. Y.

Henry Fisher, is an individual, trading as Fisher-Mair Uniform Co., with his office and principal place of business at 11 West Twenty-fifth Street, New York, N. Y.

PAR. 3. Said respondent members at all times herein mentioned have been and now are engaged in the manufacture, sale and delivery of articles of the type and character mentioned in paragraph 1 hereof and delivering the same to their customers in the various States of the United States other than New York, the State of origin, and in the District of Columbia, whereby said respondents created and maintained, and still maintain, a constant and continuous current of commerce in said uniforms and other like articles of merchandise between the respondent members and the purchasers thereof, in, among and between the various States of the United States, and in the District of Columbia.

The volume of business done by respondent members constitutes a substantial portion of the whole of such done by this industry particularly in the metropolitan area of New York City.

PAR. 4. Said respondent members are in competition with one another in the manufacture, sale and distribution of their said products and other like articles in the various States of the United States and in the District of Columbia, except insofar as their said competition has been hindered, lessened or restrained, or potential competition among them forestalled, by the acts, practices, methods, and policies of said respondents hereinafter set forth.

There are other corporations, partnerships, firms, and individuals not affiliated with respondent Exchange and which are engaged in the manufacture, sale and distribution of similar articles of merchandise in the area in which said respondents trade, in competition with one another, and with one or more of said member respondents, except insofar as such competition has been hindered, lessened and restrained, or potential competition among them forestalled, by the said respondents' acts, practices, methods, and policies hereinafter described.

PAR. 5. Said respondents, during the time herein referred to, have entered into, maintained and carried out agreements, understandings, combinations and conspiracies, between and among themselves to suppress, hinder and lessen competition in the manufacture, sale and delivery of their said products in the course of said commerce, in,

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among and between the various States of the United States, and in the District of Columbia.

Pursuant to, and in furtherance of, and to make effective said agreements, understandings, combinations and conspiracies, said respondents have cooperatively, concertedly and collectively adopted, engaged in, and carried out, among others, the following methods, acts and practices:

1. Organized respondent Exchange, as aforesaid, to control and regulate the business of manufacturing, selling, and delivering the said articles of merchandise.

2. Adopted in January 1936 and maintained, and still maintain, a cost guide and Manual for the manufacture and distribution of uniforms which required, and requires, among other things:

(a) That the price of cloth in any garment manufactured by respondent members shall be figured at the market or replacement cost, and not at the specific cost to the purchaser thereof; and

(b) Fixed

(1) A standard shrunk net yardage scale in detail for their various products;

(2) An average cutting cost;

(3) Material cost for trimmings, findings, sewings, fronts, pockets, and linings for their various products;

(4) Standard labor costs in detail for their various products;

(5) Minimum overhead costs;

(6) Selling terms; and

(c) Required, and now require, a respondent member who bids below Manual cost to submit a new or revised bid at least 5 percent higher than his original bid.

3. Reported and now report to respondent Exchange the names of all members who failed to abide by the overhead charges and other items covered by said Manual and by the rules and regulations of said Exchange, as herein set forth.

4. Set up and maintain, and still maintain, an arbitration board or committee as a disciplinary and punitive agency to enforce the various provisions of said Manual, with authority to impose fines, suspend and expel members who failed or refused to comply with the rules and regulations of said Exchange and to otherwise enforce the same, subject only to the review and approval of a chairman whose decision is final.

5. Allowed and now allow the examination of the books and records of the respondent members by said committee for the purpose of assuring the compliance with all the rules and regulations of the

said Manual and for the employment of the necessary aid to enforce the aforesaid rules and regulations.

6. Used other similar means and methods to lessen, suppress, and restrain competition among respondents' members and with other members engaged in the manufacture, sale, and delivery of said products.

PAR. 6. The capacity, tendency, and effect of the aforesaid agreements, understandings, combinations, and conspiracies and the policies, practices and acts and things done and performed by respondents in pursuance thereof are and have been to unreasonably lessen, suppress and restrain competition in the manufacture, sale and delivery of respondents' products in the various States of the United States and in the District of Columbia and to deprive the purchasing, using and consuming public of the advantage of competitive prices, terms and conditions in connection with the purchase thereof, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction and detriment to the freedom of fair and legitimate competition in such trade and industry; and particularly between the members of said Exchange.

PAR. 7. The acts and practices of said respondents, and the things done and performed by them, 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 between and among said member respondents in the manufacture, sale and delivery of their said products in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in member respondents the power to control and enhance prices and other terms and conditions in connection with the manufacture, sale and delivery of their said products; have a dangerous tendency to create in member respondents a monopoly in said products in said commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition in 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 February 25, 1942, issued, and on February 26, 1942, served, its complaint in this proceeding upon the respondents named in the above caption, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the

filing of an answer on behalf of the respondents, except the respondent, Henry Fisher, the Commission, by order entered herein, granted the 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, except as hereinafter set forth, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. An admission answer was filed on behalf of respondent, Alf S. Mair, trading as Fisher-Mair Uniform Co. (sued herein as Henry Fisher, trading as Fisher-Mair Uniform Co.), admitting all the material allegations of fact set forth in said complaint, except as therein set forth, and waiving all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, 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, Uniform Manufacturers Exchange, Inc., is an incorporated association, organized in 1934 under and by virtue of the laws of the State of New York with its office at 112 East Nineteenth Street, New York, N. Y., and hereinafter referred to as respondent "Exchange."

The following named individuals are officers of said respondent Exchange: George Appel, president; Howard V. Smith, Sr., vice president; I. Charles Bernhard, secretary; and Elias Goldstein, treasurer.

The following named individuals, together with said officers are members of, and constitute the board of directors of said Exchange; T. A. DuBois, Arthur Stone, and E. S. Smith.

Respondent Exchange is the successor of a voluntary unincorporated association formed for the same purposes as respondent Exchange.

The membership of said respondent Exchange is made up of numerous corporations, partnerships, firms, and individuals, engaged in the manufacture, sale, and distribution of uniforms, overcoats, and other articles of wearing apparel commonly worn by doormen, bell-boys, porters, chauffeurs, and others engaged in similar employment, except policemen and firemen.

PAR. 2. Respondent members of said respondent Exchange are as follows:

All-Bilt Uniforms, 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 147 Fulton Street, New York, N. Y.

S. Appel & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 18 Fulton Street, New York, N. Y.

Bernhard, Schrag & 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 place of business at 18 West Eighteenth Street, New York, N. Y.

Brooks Uniform Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1140 Sixth Avenue, New York, N. Y.

I. Buss, 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 84 Fifth Avenue, New York, N. Y.

Walter Cahn Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 237 Lafayette Street, New York, N. Y.

Stone Uniform Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 9 East Nineteenth Street, New York, N. Y.

Uniforms by Ostwald, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 18 East Sixteenth Street, New York, N. Y.

The Joseph F. Webber Uniform Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 273 Fifth Avenue, New York, N. Y.

Z. & O. Uniform Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 45 East Twentieth Street, New York, N. Y.

Russell Uniform Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1600 Broadway, New York, N. Y.

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B. Schellenberg & Sons, is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 72 Willoughby Street, Brooklyn, N. Y.

Smith-Gray Corporation, is a corporation, organized, existing and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 740 Broadway, New York, N. Y.

A. DuBois Son, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with office and principal place of business at 17 Union Square, West, New York, N. Y.

L. P. Maher, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with office and principal place of business at 331 Fourth Avenue, New York, N. Y.

Merson Clothes, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with office and principal place of business at 254 Canal Street, New York, N. Y.

Charles Palley and Abraham Cebulsky, are individuals and copartners, trading as Acme Uniform Co., with their office and principal place of business at 817 Broadway, New York, N. Y.

Charles Mitchell and Paul Perkins, are individuals and copartners, trading as Mitchell & Perkins, with their office and principal place of business at 260-262 West Forty-first Street, New York, N. Y.

John A. Hughes and William A. Thomas, are individuals and copartners, trading as Hughes & Thomas, with their office and principal place of business at 53 East Nineteenth Street, New York, N. Y.

L. M. Barth, is an individual, with his office and principal place of business at 257 Fourth Avenue, New York, N. Y.

Arthur R. Meyers, is an individual, trading as National Uniform Co., with his office and principal place of business at 41 East Twenty-eighth Street, New York, N. Y.

Albert T. Scafati, is an individual, trading as A. T. Scafati Corporation, with his office and principal place of business at 226 West Forty-first Street, New York, N. Y.

Respondent, Wender & Goldstein Uniform Service Corporation, is, and was, during the time hereinafter mentioned, a service corporation, and was not a member of the respondent Exchange, and did not participate in the acts and practices hereinafter described.

While it appears from the answer filed by Al S. Mair, trading as Fisher-Mair Uniform Co., whose office and principal place of business

is at 11 West Twenty-fifth Street, New York, N. Y., that during a part of the time hereinafter mentioned, said company was composed of said Harry Fisher and Al S. Mair, copartners, trading under said name, but at the time of the issuance of the complaint said partnership had been dissolved and said Al S. Mair became the sole owner of, and continued to trade as, Fisher-Mair Uniform Co. at the above address and filed his answer herein.

PAR. 3. Said respondent members at all times mentioned have been, and now are, engaged in the manufacture and in the sale and distribution of uniforms and wearing apparel in commerce among and between the various States of the United States, and caused said products when sold to be shipped to purchasers thereof located in the various States of the United States other than the State of origin of such shipments, whereby said respondents created and maintained a constant and continuous current of commerce in said uniforms and other like articles of merchandise between the respondent members and the purchasers thereof, in, among, and between the various States of the United States, and in the District of Columbia.

The volume of business done by respondent members constitutes a substantial portion of the whole of such done by its industry, particularly in the metropolitan area of New York City.

PAR. 4. Said respondent members are in competition with one another in the manufacture, sale, and distribution of their said products and other like articles in the various States of the United States and in the District of Columbia, except insofar as their said competition has been hindered, lessened, or restrained, or potential competition among them forestalled, by the acts, practices, methods, and policies of said respondents hereinafter set forth.

There are other corporations, partnerships, firms, and individuals not affiliated with respondent Exchange and which are engaged in the manufacture, sale, and distribution of similar articles of merchandise in the area in which said respondents trade, in competition with one another, and with one or more of said member respondents, except insofar as such competition has been hindered, lessened, and restrained, or potential competition among them forestalled by the said respondents' acts, practices, methods, and policies hereinafter described.

PAR. 5. Said respondents, during the time herein referred to, have entered into, maintained, and carried out agreements, understandings, combinations, and conspiracies, between and among themselves to suppress, hinder and lessen competition in the manufacture, sale, and delivery of their said products in the course of said commerce, in, among and between the various States of the United States, and in the District of Columbia.

Pursuant to, and in furtherance of, and to make effective said agreements, understandings, combinations and conspiracies, said respondents have cooperatively, concertedly, and collectively adopted, engaged in, and carried out, among others, the following methods, acts and practices:

1. Organized respondent Exchange, as aforesaid, on or about August 20, 1934, to control and regulate the business of manufacturing, selling and delivering the said articles of merchandise.

2. Adopted in January 1936 and maintained for sometime thereafter a cost guide and Manual to govern manufacture and distribution of said uniforms which required, and requires, among other things:

(a) That the price of cloth in any garment manufactured by respondent members shall be figured at the market or replacement cost, and not at the actual cost to the specific purchaser thereof; and which

(b) Fixed

(1) A standard shrunk net yardage scale in detail for their various products;

(2) An average cutting cost;

(3) Material cost for trimmings, findings, sewings, fronts, pockets, and linings for their various products;

(4) Standard labor costs in detail for their various products;

(5) Minimum overhead costs;

(6) Selling terms; and which

(c) Required a respondent member who bids below Manual cost to submit a new or revised bid at least 5 percent higher than his original bid.

3. Reported to respondent Exchange the names of all members who failed to abide by the overhead charges and other items covered by said Manual and by the rules and regulations of said Exchange, as herein set forth.

4. Set up and maintained an arbitration board or committee as a disciplinary and punitive agency to enforce the various provisions of said Manual, with authority to impose fines, suspend and expel members who failed or refused to comply with the rules and regulations of said Exchange and to otherwise enforce the same, subject only to the review and approval of a chairman whose decision is final.

5. Allowed the examination of the books and records of the respective respondent members by said committee for the purpose of assuring their compliance with all the rules and regulations of the said Manual and providing for the employment of the necessary sanctions to enforce the aforesaid rules and regulations.

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6. Used other similar means and methods to lessen, suppress and restrain competition among respondent members in the manufacture, sale, and delivery of said products.

PAR. 6. The Commission finds that the arbitrary fixing of material, labor and overhead costs and conditions of sale by means of a cost guide or manual as hereinbefore described, and the adherence to such costs and conditions of sale by the respondents, constituted the fixing of the minimum prices at which respondents' uniforms and garments were to be sold and had the tendency and effect of fixing or regulating prices for such merchandise.

PAR. 7. The capacity, tendency and effect of the aforesaid agreements, understandings, combinations and conspiracies and the policies, practices and acts and things done and performed by respondents in pursuance thereof are and have been to unreasonably lessen, suppress, and restrain competition in the manufacture, sale, and delivery of respondents' products in the various States of the United States and in the District of Columbia and to deprive the purchasing, using and consuming public of the advantage of competitive prices, terms and conditions in connection with the purchase thereof, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction and detriment to the freedom of fair and legitimate competition in such trade and industry; and particularly between the members of said Exchange.

CONCLUSION

The acts and practices of said respondents, and the things done and performed by them, as herein found, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition between and among said member respondents in the manufacture, sale and delivery of said products in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in member respondents the power to control and enhance prices and other terms and conditions in connection with the manufacture, sale and delivery of their said products; have a dangerous tendency to create in member respondents a monopoly in said products in said commerce; have unreasonably restrained such commerce in their said products; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of all

the respondents, except Henry Fisher, in which answers all the respondents, except Wender & Goldstein Uniform Service Corporation, a corporation, admit all the material allegations of fact set forth in said complaint and waive 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 respondents, except Wender & Goldstein Uniform Service Corporation, a corporation, and Henry Fisher, have violated the provisions of section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, Uniform Manufacturers Exchange, Inc., an incorporated association, All-Bilt Uniforms, Inc., a corporation; S. Appel & Co., Inc., a corporation; Bernhard, Schrag & Co., Inc., a corporation; Brooks Uniform Co., Inc., a corporation; I. Buss, Inc., a corporation; Walter Cahn Co., Inc., a corporation; Stone Uniform Co., Inc., a corporation; Uniforms by Ostwald, Inc., a corporation; The Joseph F. Webber Uniform Corporation, a corporation; Z. & O. Uniform Co., Inc., a corporation; Russell Uniform Co., a corporation; B. Schellenberg & Sons, a corporation; Smith-Gray Corporation, a corporation; A. DuBois Son, Inc., a corporation; L. P. Maher, Inc., a corporation; and Merson Clothes, Inc., a corporation; and their respective officers, directors, agents, and representatives; and Charles Palley and Abraham Cebulsky, individuals, trading as Acme Uniform Co.; Charles Mitchell and Paul Perkins, individuals, trading as Mitchell & Perkins; John A. Hughes and William A. Thomas, individuals, trading as Hughes & Thomas; L. M. Barth, an individual; Arthur R. Meyers, an individual, trading as National Uniform Co.; Albert T. Scafati, an individual, trading as A. T. Scafati Corporation; and Al S. Mair, an individual, trading as Fisher-Mair Uniform Co. (sued herein as Henry Fisher, trading as Fisher-Mair Uniform Co.); and their respective agents, representatives, and employees; and George Appel, Howard V. Smith, Sr., I. Charles Bernhard, Elias Goldstein, T. A. DuBois, Arthur Stone, and E. S. Smith, individuals, and as officers and directors of the Uniform Manufacturers Exchange, 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 uniforms, overcoats, and other like articles of wearing apparel commonly worn by doormen, bellboys, porters, and others engaged in similar employment or any other uniforms or articles of wearing apparel, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any common course of action, agreement, understanding, combina-

tion, or conspiracy, between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Compiling, publishing, or distributing any cost guide or manual, or any other similar device for use of respondents, which establishes or provides an arbitrary method for fixing or determining material, labor, and overhead costs.

2. Establishing, fixing, or maintaining minimum prices for respondents' garments by adhering to, or promising to adhere to, any arbitrary or fixed cost for material, labor, and overhead costs established by any cost guide or manual, or by any other plan or method, or fixing or regulating prices for said products by any other means or in any other manner.

3. Establishing, fixing, or maintaining terms or conditions of sale for respondents' garments by adhering to, or promising to adhere to, any arbitrary or fixed selling terms established by any cost guide or manual or by any other plan or method.

4. Establishing, fixing, or maintaining material, labor, or overhead costs, as a basis for any price or bid quotation on respondents' garments, by adhering to, or agreeing to adhere to, any cost guide or manual or any other plan or method which provides for any of the following or similar arbitrary methods of fixing or determining such costs:

(a) The use of market or replacement costs, or any other specific or arbitrary price other than actual cost to the manufacturer, to determine the cost of cloth used in the manufacture of any garment,

(b) The use of any standard shrunk net yardage scale,

(c) The use of an average cutting cost,

(d) The use of standard or uniform costs for trimmings, findings, sewings, fronts, pockets, and linings used in the manufacture of any garment,

(e) The use of standard labor costs in detail for various products,

(f) The use of minimum overhead costs.

5. Arriving at the amount of any bid or price quotation to be submitted to any purchaser of uniforms or wearing apparel by any arbitrary method for fixing material, labor, or overhead costs, as a basis for such bid or price quotations, as set out in any cost guide, manual, or by any other plan or method, or requiring a member who bids below such costs to submit a new or revised bid higher than the original bid.

6. Reporting or relaying to respondent Uniform Manufacturers Exchange, Inc., or to any other medium or central agency, the names of members of the Exchange who fail to adhere to any schedule of costs

or prices contained in any cost guide, manual, or in any other plan or method.

7. Coercing, inducing, or persuading, or attempting to coerce, induce, or persuade, members of Uniform Manufacturers Exchange, Inc., to adhere to or maintain the minimum prices, terms, or conditions of sale, or any schedule of costs or prices, contained in any cost guide, manual, or in any other plan or method, by maintaining an arbitration board, committee, or other similar agency as a disciplinary or punitive agency to enforce the various provisions of such cost guide, manual, or other plan or method.

8. Authorizing or permitting the examination of the books and records of the respondent members by any agent of the respondents or by any arbitration board, committee, or like agency having disciplinary, punitive, or other powers to enforce compliance with any rules and regulations pertaining to costs, prices, or terms or conditions of sale, contained in any cost guide, manual, or in any other plan or method.

9. Authorizing, directing, or permitting any arbitration board, committee, or other central agency to impose fines upon, or suspend or expel, members who fail, refuse, or neglect to comply with the rules and regulations of respondent Uniform Manufacturers Exchange, Inc., with reference to costs and prices, or to maintain minimum prices, terms, or conditions of sale, or who fail to adhere to arbitrary or fixed costs for material, labor, or overhead established by any cost guide, manual, or any other plan or method.

10. Formulating or putting into operation any other practice or plan which has the purpose or the tendency or effect of fixing prices for uniforms or other articles of wearing apparel, or otherwise restricting, restraining, or eliminating competition in the sale and distribution of such products.

11. Employing or utilizing respondent Uniform Manufacturers Exchange, Inc., or any arbitration board, committee, or other central agency, as a punitive or disciplinary agency to enforce any rules or regulations pertaining to costs and prices, or as an instrument, vehicle, or aid in performing or doing any of the acts or practices prohibited by this order.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents, Wender & Goldstein Uniform Service Corporation and Henry Fisher.

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
BAER LABORATORIES, INC.

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

Docket 4686. Complaint, Jan. 29, 1942—Decision, Sept. 17, 1942

Where a corporation, engaged in the preparation, packing, and interstate sale and distribution of its "Sulfuraid-21" medicinal preparation; by means of advertisements in newspapers and other periodicals, and by booklets and other advertising literature, including purported testimonials, directly and through inference—

- (a) Falsely represented that its said product, when used in hot baths, was an effective relief, preventive, and cure for muscular, articular, and ligamentous pain, and all other pain except headaches, including that due to rupture of muscles, contusions, neuralgia, tubes, and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; and pain from rheumatism, arthritis, neuritis, gout, lumbago, and nervous exhaustion; and
- (b) Falsely represented that in such hot baths, sulphur was absorbed from the water through the skin and mucous membrane and thus had a general pharmacological effect; that said preparation in hot water tended to make one perspire more quickly and freely and aided a more rapid elimination of the body's waste products and the counteraction of overacidity in the body; and that "Sulfuraid-21" was the first successful effort to create sulphur in solution;

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 belief, to purchase substantial quantities of 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. Webster Ballinger*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. Emanuel B. Morganstern, 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 Baer 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:

Complaint

PARAGRAPH 1. Respondent, Baer Laboratories, 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 30 East Twentieth Street, in the city of New York, State of New York. Said respondent is now, and for more than 1 year last past has been, engaged in the preparation, packing, sale, and distribution of a medicinal product designated by respondent as "Sulfuraid-21."

PAR. 2. Respondent causes its said product, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained a course of trade in its said product "Sulfuraid-21" in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product "Sulfuraid-21" 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 by the United States mails, by advertisements in newspapers and other periodicals, and by booklets and other advertising literature distributed among purchasers and prospective purchasers, are the following:

Rheumatism, arthritis, neuritis or gout relieved or you pay nothing!

New Scientific Achievement.

You know, or have heard, how the world famous natural Hot Sulphur Springs Baths of this country and Europe have relieved persons of the tortures of Rheumatism, Arthritis, Neuritis, Gout, Lumbago, Nervous Exhaustion, etc., after all other means failed.

Sulphur in SOLUTION which hitherto defied man's efforts to produce is now an accomplished fact.

Undoubtedly, the most effective and yet the most economic treatment for relief of arthritic pains is a hot sulphur bath at home.

Medical research has delved to some extent into the therapeutic action and pharmacological value of these baths. and while much still remains to be done

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in this field, evidence of their general efficaciousness for relief of rheumatic diseases and other affections is established beyond the shadow of a doubt.

One of the most characteristic effects of sulphur water is probably the soothing of pain due to the exhausting sedative action of H₂S.* Sulphur water assuages all kinds of pain, except headaches, regardless of the cause or origin. They not only stop muscular, articular and ligamental pain, but pain due to rupture of muscles, contusions, neuralgia, tubes and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period, etc. One active factor in the soothing of pain is doubtless heat, but here it is not the only factor. Every sedative alleviates at the same time, since sedative and analgesic effects are closely connected, and sulphur water probably owes its effect of alleviating pain to the sedative effect of H₂S apart from heat. Thus we see that even in the alleviation of pain, sulphur baths do not merely act as a local stimulus on the body surface. Sulphur is absorbed from the water through the skin and mucous membrane and exerts a general pharmacological effect.

The name given this newly-discovered product is SULFURAID-21.

In this connection it is important to remember that inhalation of the sulphur vapors emitted by these baths, tends to have a cleansing action on the passages of the nose and throat; aids in relieving congestion in these parts and helps make breathing easier. Anyone taking these baths is sensible of this pleasant, clarifying effect.

The action of the sulphur in solution in hot water tends to make one perspire quickly and freely, and thus aid more rapid elimination of the body's waste products and counteract overacidity.

As has already been shown by one medical authority whom we quoted, sulphuretted hot water baths probably owe their powers of alleviating pain, apart from heat, to the sedative effect of the sulphur, which is absorbed to a degree and is, therefore more than merely a local stimulus on the body surface. It is empirically known that absorption of the sulphur is effected through the skin and through inhalation of its vapors.

Among the noticeable effects of hot baths with SULFURAID-21, aside from allaying painful symptoms, is the delightful feeling of refreshment usually following them; the easing of nervous tension; the improved elasticity of stiffened joints; the sound, restful sleep they help induce, and the more buoyant and rested feeling they impart the morning after.

Occasionally, more than one complete course of 21 baths may be required, as those who visit the Spas have found. In the majority of cases, the full course of SULFURAID-21 baths should be sufficient for all purposes. To help prevent recurrence of the aches and pains, it is wise, however, to continue taking a hot SULFURAID bath once every ten days.

And in addition certain commendatory expressions purporting to have come from users of the product, typical of which are the following:

I prescribed your SULFURAID-21 for clinical test on my Mother, who has been suffering from a very severe rheumatic for the past 25 years or more. I can, with assurance, say that it has helped her a good deal. She tells me it has done more good for her than the baths she took at Saratoga and Mt. Clemens. She did observe that the daily baths were too weakening because of the rapid loss of body fluids. When she began to take the baths two or three times a week, the results were more favorable. I do not hesitate to prescribe your product and recommend it very highly.

Complaint

When one has been rheumatic for as many years as I have, and tried almost everything that offered the slightest hope for relief with little or no success, you will hardly blame me for being skeptical at first over what SULFURAID-21 could do for me. Were it not for the fact that I learned from a friend how greatly she was helped by taking the baths at Aix-le-Bains in France, I would probably still be in ignorance of what hot sulphur baths could do for a person in my condition. I completed your course of 21 baths three months ago. Since then I have had no pain at all, even during wet weather, except for an occasional slight feeling of discomfort, which passes almost as quickly as it comes. Your Sulfuraid-21 has proved a boon to me. With this help for my future defense against such suffering, I can look forward to enjoying life much more fully than I have. Does it not make you happy, too, to know how much your hot sulphur baths help? With all good wishes for your success, I am

Cordially yours.

PAR. 5. Through the use of the foregoing representations and quotations, and others similar thereto, not specifically set out herein, the respondent represents, and has represented, directly and through inference, that its said product "Sulfuraid-21" when used in hot baths, is an effective relief, preventative, and cure for muscular, articular, and ligamental pain, and all other pain except headaches, including pain due to rupture of muscles, contusions, neuralgia, tubes, and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; pain from rheumatism, arthritis; neuritis, gout, lumbago, and nervous exhaustion; that as a result of the use of said preparation in hot water baths, sulphur is absorbed from the water through the skin and mucous membrane and thus has a general pharmacological effect; that inhalation of sulphur vapors emitted from hot baths containing "Sulfuraid-21" has a cleansing action on air passages of the nose and throat and aids in relieving congestion in these parts; that the action of said preparation in hot water is such that it tends to make one perspire more quickly and freely and aids a more rapid elimination of the body's waste products and the counteraction of over-acidity in the body; and that "Sulfuraid-21" is the first successful effort to create sulphur in solution.

PAR. 6. The aforesaid representations are grossly exaggerated, false, and misleading and constitute false advertisements. In truth and in fact respondent's said product "Sulfuraid-21" when used in hot baths, is not an effective relief, preventative or cure for muscular, articular, or ligamental pain or for pain due to rupture of muscles; contusions, neuralgia, tubes, tumors, abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; or for pain caused by rheumatism, arthritis, neuritis, gout, lumbago, or nervous exhaustion, or any other pain. The use of said preparation in hot water baths will not result in sulphur being absorbed from the water through the skin and mucous membrane, and will not exert a general

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pharmacological effect on the body. The inhalation of sulphur vapors of hot baths containing "Sulfuraid-21" does not have a cleansing action on air passages of the nose and throat and does not aid in relieving congestion in these parts of the body, but may have a contrary effect. The addition of said preparation to hot water bath will not, because of such addition, tend to make a person perspire more quickly or freely, and will not aid more rapid elimination of the body's waste products or counteract acidity in the body. "Sulfuraid-21" does not represent the first successful effort to create sulphur in solution. Moreover, said preparation when used in hot baths is of no therapeutic effect in the treatment of any disease or condition of the human body.

PAR. 7. The use by respondent of said false and misleading advertisements with respect to its said product, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, cause a substantial portion of the purchasing public to believe that respondent's product 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 such portion of the purchasing public to purchase substantial quantities of said product 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 January 29, 1942, issued, and on January 30, 1942, served its complaint in this proceeding upon respondent, Baer Laboratories, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. After the issuance of said complaint, the filing of respondent's answer, and the taking of testimony and evidence thereunder, 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, testimony, and evidence taken thereunder, and the substitute answer, and the Commission, having duly considered

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Baer Laboratories, 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 30 East Twentieth Street, in the city of New York, State of New York. Said respondent is now, and for more than 1 year last past has been engaged in the preparation, packing, sale, and distribution of a medicinal preparation designated by respondent as "Sulfuraid-21."

PAR. 2. Respondent causes its said product, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product, "Sulfuraid-21" in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product "Sulfuraid-21" 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 by the United States mails, by advertisements in newspapers and other periodicals, and by booklets and other advertising literature distributed among purchasers and prospective purchasers, are the following:

Rheumatism, arthritis, neuritis or gout relieved or you pay nothing!

New Scientific Achievement.

You know, or have heard, how the world famous natural Hot Sulphur Spring Baths of this country and Europe have relieved persons of the tortures of Rheumatism, Arthritis, Neuritis, Gout, Lumbago, Nervous Exhaustion, etc., after all other means failed.

Sulphur in SOLUTION which hitherto defied man's efforts to produce is now an accomplished fact.

Undoubtedly, the most effective and yet the most economic treatment for relief of arthritic pains is a hot sulphur bath at home.

Medical research has delved to some extent into the therapeutic action and pharmacological value of these baths, and while much still remains to be done in this field, evidence of their general efficaciousness for relief of rheumatic diseases and other affections is established beyond the shadow of a doubt.

One of the most characteristic effects of sulphur water is probably the soothing of pain due to the exhausting sedative action of H₂S. Sulphur water assuages all kinds of pain, except headaches, regardless of the cause or origin. They not only stop muscular, articular and ligamental pain, but pain due to rupture of muscles, contusions, neuralgia, tubes and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period, etc. Every Sedative alleviates at the same time, since sedative and analgesic effects are closely connected, and sulphur water probably owes its effect of alleviating pain to the sedative effect of H₂S apart from heat. Thus we see that even in the alleviation of pain, sulphur baths do not merely act as a local stimulus on the body surface. Sulphur is absorbed from the water through the skin and mucous membrane and exerts a general pharmacological effect.

The name given this newly-discovered product is SULFURAID-21.

The action of the sulphur in solution in hot water tends to make one perspire quickly and freely, and thus aid more rapid elimination of the body's waste products and counteract overacidity.

As has already been shown by one medical authority whom we quoted, sulphuretted hot water baths probably owe their powers of alleviating pain, apart from heat, to the sedative effect of the sulphur, which is absorbed to a degree and is, therefore, more than merely a local stimulus on the body surface. It is empirically known that absorption of the sulphur is effected through the skin and through inhalation of its vapors.

Among the noticeable effects of hot baths with SULFURAID-21, aside from allaying painful symptoms, is the delightful feeling of refreshment usually following them; the easing of nervous tension; the improved elasticity of stiffened joints; the sound restful sleep they help induce, and the more buoyant and restful feeling they impart the morning after.

Occasionally, more than one complete course of 21 baths may be required as those who visit the Spas have found. In the majority of cases, the full course of SULFURAID-21 baths should be sufficient for all purposes. To help prevent recurrence of the aches and pains, it is wise, however, to continue taking a hot SULFURAID bath once every ten days.

And in addition certain commendatory expressions purporting to have come from users of the product, typical of which are the following:

I prescribed your SULFURAID-21 for clinical test on my Mother, who has been suffering from a very severe rheumatic for the past 25 years or more. I can, with assurance, say that it has helped her a good deal. She tells me it has done more good for her than the baths she took at Saratoga and Mt. Clemens. She did observe that the daily baths were too weakening because of the rapid loss of body fluids. When she began to take the baths two or three times a

week, the results were more favorable. I do not hesitate to prescribe your product and recommend it very highly.

When one has been rheumatic for as many years as I have, and tried almost everything that offered the slightest hope for relief with little or no success, you will hardly blame me for being skeptical at first over what SULFURAIID-21 could do for me. Were it not for the fact that I learned from a friend how greatly she was helped by taking the baths at Aix-le-Bains in France, I would probably still be in ignorance of what hot sulphur baths could do for a person in my condition. I completed your course of 21 baths three months ago. Since then I have had no pain at all, even during wet weather, except for an occasional slight feeling of discomfort, which passes almost as quickly as it comes. Your Sulfuraid-21 has proved a boon to me. With this help for my future defense against such suffering, I can look forward to enjoying life much more fully than I have. Does it not make you happy too, to know how much your hot sulphur baths help? With all good wishes for your success, I am

Cordially yours,

PAR. 4. Through the use of the foregoing representations and quotations and others similar thereto, not specifically set out herein, the respondent represents, and has represented, directly and through inferences, that its said product "Sulfuraid-21," when used in hot baths, is an effective relief, preventative, and cure for muscular, articular, and ligamental pain, and all other pain except headaches, including pain due to rupture of muscles, contusions, neuralgia, tubes, and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; pain from rheumatism, arthritis, neuritis, gout, lumbago, and nervous exhaustion; that as a result of the use of said preparation in hot-water baths, sulphur is absorbed from the water through the skin and mucous membrane and thus has a general pharmacological effect; that the action of said preparation in hot water is such that it tends to make one perspire more quickly and freely and aids a more rapid elimination of the body's waste products and the counteraction of over acidity in the body; and that "Sulfuraid-21" is the first successful effort to create sulphur in solution.

PAR. 5. The aforesaid representations are grossly exaggerated, false, and misleading and constitute false advertisements. In truth and in fact respondent's said product "Sulfuraid-21," when used in hot baths, is not an effective relief, preventative, or cure for muscular, articular, or ligamental pain, or for pain due to rupture of muscles, contusions, neuralgia, tubes, tumors, abdominal spasms, pleural pains or articular rheumatism of women during their climacteric period; or for pain caused by rheumatism, arthritis, neuritis, gout, lumbago, or nervous exhaustion, or any other pain. The use of said preparation in hot-water baths will not result in sulphur being absorbed from the water through the skin and mucous membrane and will not exert a general pharmacological effect on the body. The addition of said preparation

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to hot-water baths will not, because of such addition, tend to make a person perspire more quickly or freely, and will not aid more rapid elimination of the body's waste products or counteract acidity in the body. "Sulfuraid-21" does not represent the first successful effort to create sulphur in solution; moreover, said preparation, when used in hot baths, is of no therapeutic effect in the treatment of any diseases or diseased condition of the human body.

PAR. 6. The use by the respondent of said false and misleading statements, representations, and advertisements with respect to its said product, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading statements, representations, and advertisements were true and has had the tendency and capacity to, and has induced a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said product "Sulfuraid-21."

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Baer Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation known as "Sulfuraid-21," 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:

Order

1. Disseminating or causing to be disseminated any advertisements:
 - (a) by means of the United States mails, or
 - (b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that its preparation "Sulfuraid-21" or any like or similar preparation, when used in hot water baths, is an effective relief, preventative or cure for rheumatism, arthritis, neuritis, gout, lumbago or nervous exhaustion, or for muscular, articular or ligamental pain, or for pain due to rupture of muscles, contusions, neuralgia, tubes, tumors, abdominal spasms, pleural pains, or articular rheumatism of women during their climacteric period; or that as a result of the use of "Sulfuraid-21" in hot water baths, sulphur is absorbed from the water through the skin and mucous membranes and thus has a general pharmacological effect on the human body or that the addition of said preparation to hot water, because of such addition, tends to make a person perspire more quickly or freely and aids a more rapid elimination of the body's waste products and the counteraction of acidity in the body; or that "Sulfuraid-21" is the first successful effort to create sulphur in solution or when used in hot baths possesses any therapeutic effect in the treatment of any disease or diseased condition of the human body.
 2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said "Sulfuraid-21" which advertisements contain any of the representations prohibited in paragraph 1 hereof.
- It is further ordered,* That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

J. E. MILLER, DOING BUSINESS AS KONDI COMPANY

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

Docket 3217. Complaint, Aug. 27, 1937—Decision, Sept. 21, 1942

Where an individual, engaged in the competitive interstate sale and distribution of his "Kondi Worm Specific and Conditioner" for dogs; by means of advertisements in newspapers and periodicals, and by circulars, pamphlets, and other advertising literature—

- (a) Represented that his said preparation would expel or destroy all intestinal parasites in dogs, including hook, tape, and round worms, in from 5 to 30 minutes; the facts being that in the treatment of worms in dogs the anthelmintic used must be specific in action, as one drug will usually remove or destroy only one type of worm; and product in question, containing powdered areca nut and santonin, constituted a satisfactory anthelmintic only with reference to the taenia and dipylidium type of tapeworm, was only 50 percent effective for large roundworms, and 25 percent for hookworms, and had no value in the removal of whipworms;
- (b) Represented that his said product was effective in the treatment of distemper and running and barking fits; the facts being no ingredient in product in question, including the drug salol, has ever been recognized by the veterinary profession as having any value in the treatment of distemper, caused by a filterable virus, for treatment of which veterinary science has thus far been unable to find any effective drug or combination of drugs; and product in question would not correct any dietary deficiency with which said profession associates running and barking fits;
- (c) Represented that such product was effective in treating dogs that were out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc.; the facts being that dog's condition, which may be due to a large number of causes, may not be remedied by any one drug or combination thereof, and said product, with no ingredient indicating any tonic effect, was not a conditioner for dogs due to fact alone that it might remove tapeworms or partially remove roundworms; and was not effective in treating dogs out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc., which indicate anemia, possibly caused by hookworm, and for removal of which product had little value; and
- (d) Represented that product in question would antiseptically cleanse the intestinal tract, and was as harmless to dogs as castor oil; the facts being that ingredient salol is without value for treatment of intestinal infection; any drug or combination of drugs with sufficient strength to cleanse the digestive tract antiseptically would kill the dog before it would accomplish such purpose; ingredient areca nut is purgative in action and also produces depression and nausea; and product in question was not a harmless preparation or one that could be indiscriminately administered;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby

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inducing it to purchase substantial quantities of product concerned in preference to those of competitors; whereby trade was diverted unfairly 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.

Before *Mr. W. W. Sheppard, Mr. Edward E. Reardon, Mr. John W. Addison* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. S. Brogdyne Tew, II for the Commission.

COMPLAINT

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

PARAGRAPH 1. Respondent, is an individual, doing business as Kondi Co., having his office and principal place of business at Atlanta, Ga. Respondent for more than 1 year last past has been and now is engaged in the sale of a certain worm medicine for dogs designated by him "Kondi Worm Specific and Conditioner," and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia, and causes and has caused said product when sold to be transported in interstate commerce from its place of business in the State of Georgia or from other States of the United States to purchasers thereof located in States other than the State of Georgia or the State of origin of the shipment and in the District of Columbia.

PAR. 2. The active ingredients of respondent's "Kondi Worm Specific and Conditioner" are powdered areca nut, milk sugar, and santonin.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been for more than 1 year last past, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with corporations, partnerships, firms, and other individuals engaged in the sale of products used and useful for the purposes for which the respondent recommends his said product.

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PAR. 4. In the course and conduct of his business as aforesaid, and in soliciting the sale of and selling said product in said commerce, respondent, through statements regarding the therapeutic value, efficacy and effect of said product, appearing on labels, order blanks and in booklets and pamphlets, and in advertisements appearing in newspapers and magazines, and through other media, makes the following representations regarding the product "Kondi Worm Specific and Conditioner":

- (a) That it is doing or has done wonders as a conditioner for dogs.
- (b) That it will positively expel or destroy all intestinal parasites in dogs, including hook, tape, and round worms, in 5 to 30 minutes.
- (c) That it causes a dog to condition by antiseptic cleansing of its digestive tract.
- (d) That it is effective and safe in treating dogs for distemper.
- (e) That it is as harmless to dogs as castor oil.
- (f) That it is effective in treating dogs for running, barking or fright fits and run-down state, which conditions respondent represents are indicated by dull eyes, pale mouth membranes, rough coat, etc.

In connection with the sale of its "Kondi Worm Specific and Conditioner" respondent has represented that 7 out of 10 dogs are infested with one or more kinds of intestinal worms.

PAR. 5. In truth and in fact respondent's representations as set out in paragraph 4 hereof, and respondent's advertisements on labels, pamphlets, order blanks, newspapers, magazines and otherwise are extravagant, false, misleading, and deceptive, in that "Kondi Worm Specific and Conditioner" when administered to dogs:

- (a) Will not operate as an effective conditioner.
- (b) Will not expel or destroy all intestinal parasites, including hook, tape, or round worms in 5 to 30 minutes nor in any time approximating such period.
- (c) Will not antiseptically clean the digestive tract and thereby condition the dog.
- (d) Will not be effective and safe in the treatment for distemper.
- (e) Is not as harmless as castor oil.
- (f) Is not effective in the treatment for running, barking or fright fits, nor are dull eyes, pale mouth membranes, rough coat, etc., true symptoms of such conditions,

nor will the administration of "Kondi Worm Specific and Conditioner" produce any results similar to those claimed for it by the respondent as hereinabove set forth. It is not true that 7 out of 10 dogs are infested with one or more kinds of intestinal worms.

PAR. 6. Respondent's advertising and representations hereinabove described have had and still have the tendency and capacity to and do mislead and deceive the purchasing public regarding the therapeutic value, efficacy and effect of "Kondi Worm Specific and Conditioner," and further, as a direct consequence of the deceptive actions and representations of the respondent and the erroneous and mistaken beliefs induced by said acts as herein set out, the purchasing public has purchased respondent's "Kondi Worm Specific and Conditioner" with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing or selling products designed for similar usage, who truthfully advertise and represent the properties of their respective products and the results that may be expected to be obtained from the use thereof. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The acts, practices, and representations of respondent hereinabove set forth are all to the injury and prejudice of the public and to the competitors of respondent in interstate commerce within the intent and meaning of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 27, 1937, issued and subsequently served its complaint in this proceeding on the respondent, J. E. Miller, an individual, doing business as Kondi Co., charging him with the use of unfair methods of competition 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 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 examiners 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, J. E. Miller, is an individual, doing business as Kondi Co., having his office and principal place of business at Atlanta, Ga. Respondent, for several years last past, has been, and now is, engaged in the sale and distribution in commerce between and among the various States of the United States of a certain worm medicine for dogs designated "Kondi Worm Specific and Conditioner," and causes said product when sold, to be transported from his place of business in the State of Georgia to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his said business, respondent is now, and for several years last past has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of medicinal preparations for dogs, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, for the purpose of inducing the purchase of his product "Kondi Worm Specific and Conditioner," respondent has disseminated false, deceptive, and misleading statements and representations with reference to said product, by means of advertisements inserted in newspapers and periodicals, and by circulars, pamphlets, and other advertising literature.

Among and typical of such false, deceptive, and misleading statements and representations are the following:

1. That respondent's preparation will expel or destroy all intestinal parasites in dogs, including hook, tape, and roundworms, in 5 to 30 minutes.

2. That respondent's preparation constitutes a conditioner for dogs and will antiseptically cleanse the intestinal tract of dogs.

3. That respondent's preparation is effective in the treatment of distemper and running and barking fits.

4. That respondent's preparation is as harmless to dogs as castor oil and is effective in treating dogs that are out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc.

PAR. 4. There are various types of worms which occur in the intestinal tract of dogs, the most common of which are hookworms, roundworms, whipworms, and tapeworms.

The hookworm (*ancylostoma caninum*) sucks the blood and causes anemia. These worms are difficult to detect and cause a dog to be slow and sluggish and the membranes of the mouth to be pale, due to loss of blood.

The ascarids, or roundworms (*toxocara canis*), live on the contents of the intestinal tract, and feed, to some extent, on the epithelial cells. The harmful effect of these worms is thought to be due to the excretion they give off. They migrate in the intestine and may attack the bile duct, or group in the small intestine, leading to obstruction.

The whipworm (*trichuris vulpis*) usually occurs in the caecum, which is the blind duct where the small intestine unites with the colon.

The tapeworm attaches itself to the wall of the intestine by means of suckers and probably derives some nutriment from the intestinal wall. There are a number of types of these worms, but the ones most commonly found in dogs are taenia pisiformis and dipylidium canium. Another type sometimes found in dogs is the dipylidobothrium, the segments of which are not passed by the animal as in the case with the other types. This latter type is rare and occurs only in limited areas in this country.

There are other types of worms or parasites which sometimes inhabit the intestinal tract of dogs, but they are so rare as not to require consideration in the treatment of dogs.

PAR. 5. In the treatment of worms in dogs, it is necessary that the anthelmintic used be specific in its action, as only one drug will usually remove or destroy only one type of worm, and there is no known preparation which is effective in the treatment of all types of worms.

A test of respondent's preparation was conducted by the Food and Drug Administration at the Agricultural Research Center at Beltsville, Md. In the course of this test, 13 dogs of various sizes and ages were used, and respondent's product administered to them in accordance with the directions. Observation was made for a period of four days to determine the number and variety of worms passed. At the end of this 4-day period an autopsy was performed and a count made of the worm content of the intestinal tract. As a result of this test, it was determined that the preparation is effective against the dipylidium and taenia type of tapeworms, but is not a satisfactory anthelmintic for large roundworms, as its efficacy was limited to approximately 50 percent. As to whipworms, the test indicated no value what-

soever. This test further indicated that this preparation was only 20 to 25 percent effective for hookworms and consequently did not constitute a satisfactory anthelmintic for this type of worm.

PAR. 6. A microscopic examination was made of respondent's product, from which it was determined that respondent's preparation consisted of powdered areca nut, crystalline santonin, and crystalline corn sugar or milk sugar. Neither milk sugar nor corn sugar is an anthelmintic and consequently the active ingredients of this preparation are powdered areca nut and santonin. Areca nut has been used from early times to remove tapeworms and is particularly effective in the taenia type of tapeworm and also reasonable effective in the dipylidium type but has little or no effect in the removal of the dipylbothrium type of tapeworm. Santonin is also a very old anthelmintic. It has no effect on tapeworms or hookworms. It was at one time considered to be valuable for the roundworm type of parasite commonly called the ascarid but is now considered to be only approximately 50 percent effective as to this particular type of worm.

PAR. 7. The respondent, in the course of the hearing, refused to divulge the ingredients contained in his preparation but did state that this preparation contained at least 1 grain of salol. At one time salol was thought to be of some value as an intestinal antiseptic because of the break-down of the drug in the intestinal tract, liberating phenol, but it is now known that this drug has never accomplished anything worth while in treating any infection of the intestinal tract and that the small amount of phenol liberated in the intestinal tract would be without any therapeutic effect. The intestinal tract of a dog may harbor various species of germs, protozoan organisms, various species of bacteria, molds, and other organisms. Any drug or combination of drugs which has sufficient strength to antiseptically cleanse the digestive tract would kill the dog before it could accomplish such purpose.

PAR. 8. Distemper is caused by what is known as a filterable virus or ultramicroscopic virus. Up to the present time veterinary science has been unable to find any drug or combination of drugs that has any effect upon the course of that specific disease. There is no ingredient in respondent's preparation that has ever been recognized by the veterinary profession as having any value in the treatment of distemper, including the drug salol. Areca nut is a purgative in action and also produces depression and nausea. The use of any preparation containing areca nut may have harmful effects and is not a harmless preparation or one that can be indiscriminately administered. The use of such preparation in the treatment of distemper might be attended with harmful results.

PAR. 9. A dog may be off of condition due to a large number of causes and it is impossible for any one drug or combination of drugs to bring a dog back to normal condition. There is nothing in respondent's preparation which indicates that it has any tonic effect whatsoever and consequently does not constitute a conditioner for dogs. Running and barking fits are considered by the veterinary profession to be diseases or conditions associated with dietary deficiency. The fact that respondent's preparation may remove tapeworms or partially remove roundworms from a dog does not warrant the representation that said preparation constitutes a conditioner for dogs or that it is effective in the treatment of running or barking fits. This preparation will not correct any dietary deficiency.

PAR. 10. Based upon tests made with respondent's preparation and upon the testimony of the various expert witnesses, the Commission finds that respondent's preparation will not destroy or expel all intestinal parasites in dogs and constitutes a satisfactory anthelmintic only with reference to the taenia and dipylidium type of tapeworm and does not constitute a satisfactory anthelmintic for large roundworms or hookworms and has no value in the removal of whipworms; that respondent's preparation does not constitute a conditioner for dogs and will not antiseptically cleanse a dog's intestinal tract; that said preparation has no value in the treatment of distemper and is not effective in the treatment of running and barking fits; that respondent's preparation is not as harmless as castor oil, but, instead, that its use may be definitely harmful; that said preparation is not effective in treating dogs that are out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc., since these symptoms, particularly pale mouth membrane, indicate anemia, which may be caused by the hookworm, for the removal of which this preparation has little value.

PAR. 11. The use by the respondent of the foregoing false, deceptive, and misleading representations with respect to his 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 such false statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation in preference to that of his competitors. As a result, trade has been diverted unfairly to the respondent from his competitors who are engaged in the sale and distribution of various medicinal preparations for dogs, in commerce

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

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of, and in opposition to, the allegations of the complaint, taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and briefs filed by counsel for the Commission and by the respondent; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, J. E. Miller, an individual doing business as Kondi Company, or trading under any other name, his representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of his product "Kondi Worm Specific and Conditioner," 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. Representing, directly or by implication, that respondent's preparation will expel or destroy all intestinal parasites or worms in dogs.
2. Representing, directly or by implication, that respondent's preparation constitutes an effective anthelmintic for hookworms or roundworms in dogs.
3. Representing, directly or by implication, that respondent's preparation has any therapeutic value, in the removal of whipworms or dipylbothrium type of tapeworm from dogs.
4. Representing, directly or by implication, that respondent's preparation has any value in the treatment of distemper in dogs.
5. Representing, directly or by implication, that respondent's preparation constitutes a competent or effective treatment for running or barking fits in dogs.

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6. Representing in any manner, either directly or by implication, that respondent's preparation constitutes a conditioner for dogs.

7. Representing, directly or by implication, that respondent's preparation is a harmless anthelmintic or that it can be safely used in the treatment of any condition associated with worms in dogs.

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

MAURICE J. ENGEL

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

Docket 4490. Complaint, Apr. 19, 1941—Decision, Sept. 21, 1942

Where an individual, engaged in competitive interstate sale and distribution of knife blades used by the fur industry—

Represented that his said blades were made of finest-tungsten surgical steel, and highly tempered and capable of taking and holding a fine edge and of being resharpened, through such statements in pamphlets and advertising broadsides distributed by mail and otherwise as "Tri-Forged" and "Tungsten Surgical Steel";

The facts being they were made of rolled carbon steel, which in price and quality is much inferior to tungsten, and were not tri-forged;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of a substantial volume of said products, whereby trade was diverted unfairly to him from his competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mr. Hendy Braverman, 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 Maurice J. Engel, 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, Maurice J. Engel, is an individual, doing business under and by virtue of the laws of the State of New York with his office and principal place of business located at 146 West Twenty-ninth Street, New York, N. Y. Respondent is engaged in the sale and distribution to dealers located in the various States of the United States and in the District of Columbia of knife blades used by the fur industry.

Complaint

PAR. 2. Respondent now maintains and for more than 1 year last past has maintained a course of trade in said products so sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business respondent is now and for more than 1 year last past has been engaged in competition with other individuals, partnerships, and corporations engaged in the business of manufacturing, selling, and distributing, and in the business of selling and distributing in commerce among and between the various States of the United States and in the District of Columbia, knife blades used by the fur industry.

PAR. 3. In the course and conduct of his business as aforesaid and for the purpose of inducing the purchase of his said knife blades used by the fur industry respondent has published and has circulated among prospective customers throughout the various States of the United States and in the District of Columbia, pamphlets and advertising broadsides, distributed by mail and otherwise, in which his products were described and represented among other things, as being:

TRI-FORGED

and

Tungsten Surgical Steel

The aforesaid statements and representations, together with similar statements and representations not herein specifically set out, purport to be descriptive of said respondent's knife blades and of their quality and effectiveness in use by the fur industry. Through the use of said statements respondent represents that his said knife blades are made of finest tungsten alloy steel and are highly tempered, capable of taking and holding a fine edge and of being resharpened if necessary.

A substantial number of the purchasing public believe that knife blades for use in the fur industry that have been tri-forged and are made from tungsten steel are superior in many respects for the purpose for which they were designed, made, and distributed.

PAR. 4. In truth and in fact respondent's knife blades for use in the fur industry are not tri-forged and the respondent's said knife blades are not made of tungsten surgical steel but of rolled carbon steel, a product much inferior to tungsten steel both in price and quality.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by the respondent as aforesaid in describing his said knife blades and 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 this erroneous and mistaken belief

so induced, a substantial portion of the purchasing public has purchased a substantial volume of the respondent's said products. 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 respondent's competitors and constitute unfair methods 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 the respondent, Maurice J. Engel, 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 the form of 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 complaint or in opposition thereto, before Miles J. Furnas, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Maurice J. Engel, is an individual, having his office and principal place of business located at 146 West Twenty-ninth Street, New York, N. Y. For more than 1 year last past, respondent has been engaged in the sale and distribution of knife blades used by the fur industry, and causes said products, when sold, to be transported from his place of business in the State of New York

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

PAR. 2. In the course and conduct of his said business, respondent is now, and for more than 1 year last past has been, engaged in competition with other individuals and with partnerships and corporations engaged in the business of selling and distributing in commerce among and between the various States of the United States and in the District of Columbia, knife blades used by the fur industry.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his said knife blades used by the fur industry, respondent has published and has circulated among prospective customers throughout the various States of the United States, pamphlets and advertising broadsides distributed by mail and otherwise, in which his products were described and represented among other things, as being:

TRI-FORGED
and
Tungsten Surgical Steel

Through the use of said statements and others similar thereto not specifically set out herein, respondent represented that his said knife blades were made of finest tungsten surgical steel and were highly tempered and capable of taking and holding a fine edge and of being resharpened if necessary.

A substantial number of the purchasing public believe that knife blades for use in the fur industry that have been tri-forged and made from tungsten steel are superior in many respects for the purpose for which they are designed, made, and distributed.

PAR. 4. In truth and in fact, respondent's knife blades for use in the fur industry are not tri-forged, and respondent's said knife blades are not made of tungsten surgical steel but of rolled carbon steel, a product much inferior to tungsten steel, both in price and quality.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations in describing said knife blades has had, and now has, a tendency and capacity to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such representations are true. As a result of this erroneous and mistaken belief so induced, a substantial portion of the purchasing public have purchased a substantial volume of respondent's said products. As a consequence thereof, trade has

been diverted unfairly to the respondent from his competitors who are likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before Miles J. Furnas, a trial examiner of the Commission theretofore duly designated by it, which testimony consisted of a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record in lieu of testimony in support of the complaint and in opposition thereto, report of the trial examiner upon the evidence, and brief 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, Maurice J. Engel, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of knives or knife blades for use by the fur industry, or other similar products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that respondent's knife blades made from rolled carbon steel are composed of tungsten surgical steel, or that said knife blades have been tri-forged.

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

IRVIN A. WILLAT, TRADING AS HEATLESS PERMANENT
WAVE COMPANY, AND ARNOLD F. WILLAT, TRADING
AS WILLAT PRODUCTION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4663. Complaint, Jan. 2, 1942—Decision, Sept. 21, 1942*

Where an individual, engaged in the interstate sale and distribution of a method of heatless permanent waving which, for a time, included an ammonium hydrogen sulphide curling solution circulated through rubber tubing attached to perforated curlers around which the hair had been rolled or wrapped; by means of advertisements in periodicals, pamphlets, and leaflets—

(a) Represented that said method of heatless permanent waving constituted a competent, successful, and scientific means of producing permanent waves in the hair which was safe and harmless, eliminated all hazards, and would have no ill effects upon the body;

The facts being solution of ammonium hydrogen sulphide, employed as above indicated, was not safe, scientific or harmless; was capable of causing local skin irritations, nausea and vomiting, and in absence of ventilation, convulsions, asphyxiation, and collapse; and if introduced into the circulatory system through skin absorption or respiration in sufficient quantities and strength might also result in systemic poisoning and death; and

(b) Failed to reveal all facts material in the light of such representations and with respect to consequences which might result from the application of said curling solution under the prescribed conditions, and that use thereof might in some instances result in serious and irreparable injury to health;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such advertisements were true, thereby inducing purchase by it of said permanent wave in beauty parlors and salons wherein ammonium hydrogen sulphide curling solution was supplied:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. William S. Graham, of San Francisco, Calif., for respondents.

COMPLAINT

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

individual, trading as Heatless Permanent Wave Co., and Arnold P. Willat, an individual, trading as Willat Production 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, Irvin A. Willat and Arnold F. Willat, are individuals, respectively, trading as Heatless Permanent Wave Co., and as Willat Production Co., with their office and principal place of business at 1122 Folsom Street, San Francisco, Calif., from which address they transact business under the above trade names.

Respondents, Irvin A. Willat and Arnold F. Willat, trading as aforesaid, act and have acted in conjunction and in cooperation with each other in performing the acts and practices hereinafter alleged.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of the Willat Method of Heatless Permanent Waving.

The said method embraces cosmetic preparations, among which is a curling solution composed of ammonium hydrogen sulfide, designated as Willat Wave DeLuxe Curling Solution and as Willat Sulfolene Curling Solution, and patented appliances and devices. The said implements are leased under license agreements with, and the cosmetic preparations are sold to, operators of beauty salons.

The said operators and their employees are instructed by said respondents in the operation and application of said method in producing permanent waves, advertised as the Willat Wave, in the hair of human subjects.

In the course and conduct of their business, the respondents cause said cosmetics and equipment, when sold and licensed, to be transported from their place of business in the State of California, to the purchasers and licensees 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; and respondents have also disseminated and are now disseminating, and have caused and are now causing the

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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 periodicals and by pamphlets and leaflets, are the following:

For A Loveller You!

Willat Wave

The *Only* Heatless Permanent

Entirely Different—Truly Magical—Sensational

Relax while you receive a Willat Wave. Countless innovations mark this latest contribution of science to the beauty of women. * * * The permanent of the future * * * eliminates all hazards, discomforts, and inconveniences * * *

* * * You can ask for a Willat Wave with perfect confidence * * * This method waves all hair regardless of texture, or your physical condition.

* * * This method waves * * * hair with perfect success.

The procedure is simple and comfortable. You relax in a reclining chair and rest * * * getting a permanent becomes a pleasure—with the Willat Wave.

One of the most exciting features of this new permanent is the condition in which it leaves the hair and scalp.

All guess work has been eliminated in permanent waving by Willat Wave. The whole operation is thoroughly scientific, from the test curl to the last rinse. A testing laboratory has predetermined all technical data used in making these waves.

Willat Wave is truly a product of the test tube * * * scientifically accurate and certain * * * no shocks or burns.

Recline, relax, enjoy * * * this entirely different permanent. Results are predetermined by a * * * scientific test. Descriptive booklet on request.

Rest * * * while the magical, cool solution is sprayed gently through your hair. One pleasant visit to your beauty salon and you have the loveliest of waves.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondents represent that their method, advertised as the Willat Wave, constitutes a competent, successful, and scientific means of producing permanent waves in the hair of human subjects; that said method is safe and harmless, eliminates all hazards and will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact the said method consists, among

other operations, of spraying the said curling solution of ammonium hydrogen sulfide into the hair through rubber tubes attached to perforated curlers around which said perforated curlers the hair has been wrapped.

To prevent said solution from flowing into the eyes and over the face and neck and to further prevent the escape of toxic gases therefrom, the aforesaid operation is performed under a rubber cap sealed around the head of said human subjects below the hair line.

The said solution of ammonium hydrogen sulfide is not safe, scientific or harmless when applied in connection with said method and may result in serious and irreparable injury to health when used under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

The said curling solution may cause local skin irritation, nausea, vomiting, convulsions, asphyxiation, and collapse. By its introduction into the circulatory system through skin absorption or through the respiratory system, it may also result in systemic poisoning and death.

PAR. 6. In addition to the representations hereinabove set forth, the respondents have also engaged in the dissemination of false advertisements in that respondents' advertisements of said product, disseminated in the manner hereinabove described, fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the application of said ammonium hydrogen sulfide curling solution, designated as Willat Wave DeLuxe Curling Solution and as Willat Sulfolene Curling Solution, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and failed to reveal that the use of said solution may result in serious and irreparable injury to health.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading advertisements with respect to said Willat Wave, 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 advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondents' said product.

PAR. 8. 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 the 2nd day of January 1942 issued and subsequently served its complaint in this proceeding upon said respondents, Irvin A. Willat, an individual, trading as Heatless Permanent Wave Co., and Arnold F. Willat, an individual, trading as Willat Production Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 13, 1942, 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 William S. Graham, counsel for the respondents, and Richard P. Whiteley, Assistant Chief Council for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. In said stipulation respondents expressly waived the filing of a report upon the evidence by a trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Irvin A. Willat and Arnold F. Willat, are individuals, respectively, trading as Heatless Permanent Wave Co. and as Willat Production Co., with their office and principal place of business at 1122 Folsom Street, San Francisco, Calif., from which address they transact business under the above trade names. Each of said individuals maintains his respective business independently of the other, and neither has any interest in the business of the other, other than that Irvin A. Willat is the son of Arnold F. Willat and that they have a very close personal relationship to the extent of mutual assistance rendered between independent individuals engaged in commercial exploitations of closely related independent businesses. Separate books of account are kept by each respondent.

PAR. 2. Respondent, Irvin A. Willat, is now, and for more than 2 years last past has been, engaged in the distribution of a method of heatless permanent waving which includes a curling solution, and certain devices, appliances and implements, and in the advertising and promotion thereof in commerce, as commerce is defined in the Federal Trade Commission Act. Respondent, Arnold F. Willat, trading as Willat Production Co., manufactures the solution distributed by Irvin A. Willat, trading as Heatless Permanent Wave Co., and the apparatus, devices, or implements used in connection therewith; and sells and has sold the solution, and has loaned the apparatus, devices, and implements exclusively to the said Irvin A. Willat for use in connection with his business as Heatless Permanent Wave Co., at San Francisco, Calif.

For the period of approximately 1 year, to wit, from about April 1, 1940, to April 1, 1941, the curling solution manufactured by said Arnold F. Willat and sold and advertised by said Irvin A. Willat was composed of an ammonium hydrogen sulphide solution. Neither of said respondents now employs in the said method of heatless permanent waving a curling solution composed of ammonium hydrogen sulphide. Prior to April 1, 1941, the appliances and devices manufactured by the said Arnold F. Willat for use in connection with the said method of heatless permanent waving were loaned or leased by the said Irvin A. Willat under nonexclusive license agreements with, and the ammonium hydrogen sulphide curling solution was sold to, operators of beauty salons.

The said operators and their employees were instructed or were caused to be instructed by the said Irvin A. Willat in the operation and application of said advertised method in producing permanent waves in the hair of human subjects, and a printed instruction book was furnished to each beauty salon licensee.

In the course and conduct of business, the respondent Irvin A. Willat caused said curling solution and equipment, when sold and licensed, to be transported from his place of business in the State of California, to the purchasers and licensees thereof located in various other States of the United States and in the District of Columbia. Sales were made exclusively to beauty salons instructed as aforesaid.

Respondent, Irvin A. Willat, during the period hereinabove named, maintained a course of trade in said products, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business as Heatless Permanent Wave Co., the respondent, Irvin A. Willat, during the period from April 1, 1940, to April 1, 1941, disseminated and caused the

dissemination of advertisements concerning the aforesaid method of heatless permanent waving by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and said respondent during said period disseminated and caused the dissemination of advertisements concerning the said method of heatless permanent waving, by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase thereof 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 periodicals and by pamphlets and leaflets, are the following:

For a Lovelier You! * * *
The *Only* Heatless Permanent

Entirely Different—Truly Magical—Sensational * * *

Countless innovations mark this latest contribution of science to the beauty of women * * * The permanent of the future * * * eliminates all hazards, discomforts and inconveniences. * * *

* * * This method waves all hair regardless of texture, or your physical condition.

* * * This method waves * * * hair with perfect success.

The procedure is simple and comfortable. You relax in a reclining chair and rest * * * getting a permanent becomes a pleasure * * *.

One of the most exciting features of this new permanent is the condition in which it leaves the hair and scalp.

The whole operation is thoroughly scientific, from the test curl to the last rinse. A testing laboratory has predetermined all technical data used in making these waves.

Truly a product of the test tube * * * Scientifically accurate and certain * * * no shocks or burns.

Recline, relax, enjoy * * * this entirely different permanent. Results are predetermined by a * * * scientific test. Descriptive booklet on request.

Rest * * * while the magical, cool solution is sprayed gently through your hair. One pleasant visit to your beauty salon and you have the loveliest of waves.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondent, Irvin A. Willat, represented that the method of heatless permanent waving so advertised constitutes a competent, successful, and scientific means of producing permanent waves in the hair of human subjects; that said method is safe and harmless, eliminates all hazards and will have no ill effects upon the human body.

PAR. 5. From approximately April 1, 1940, to April 1, 1941, the curling solution furnished and sold to beauty salons for use in said permanent wave, so advertised, contained ammonium hydrogen sul-

phide, the use of which was discontinued approximately April 1, 1941. Said ammonium hydrogen sulphide solution was employed as a curling solution circulated through rubber tubing attached to perforated curlers around which the hair has been rolled or wrapped. In the practice of the said advertised method of heatless permanent waving a rubber cap is employed sealed around the head below the hair line to prevent the curling solution and other solutions from flowing beyond the confines of said cap and to eliminate the objectionable characteristic rotten-egg odor of ammonium hydrogen sulphide solution, and an electric-fan blower was employed, connected with a hood adjacent the customer's head and with a pipe vented to the exterior of the beauty salon.

The said solution of ammonium hydrogen sulphide is not safe, scientific, or harmless when applied under some conditions in connection with said advertised method, since it may in some instances be capable of resulting in serious and irreparable injury to health, when used under the conditions prescribed in said advertisements.

There is accepted authority that the use of said curling solution, consisting of ammonium hydrogen sulphide, advertised as aforesaid, may in some instances be capable of causing local skin irritation, nausea, and vomiting. In the absence of ventilation it is capable of causing convulsions, asphyxiation, and collapse. If introduced into the circulatory system through skin absorption or through the respiratory system in sufficient quantities and strength, it may also result in systemic poisoning and death.

PAR. 6. The advertisements of the method of heatless permanent waving, disseminated in the manner hereinabove described, fail to reveal all facts material in the light of such representations, or material with respect to consequences which in some instances may result from the application of said ammonium hydrogen sulphide curling solution under the conditions prescribed in said advertisements, in that said advertisements fail to reveal that the use of said solution may in some instances result in serious and irreparable injury to health.

PAR. 7. Where the said advertised method of heatless permanent waving was used in connection with the ammonium hydrogen sulphide curling solution, as during the period from April 1, 1940, to April 1, 1941, aforesaid, the said advertising representations were false and misleading as "false advertisement" is defined in the Federal Trade Commission Act. The use of said false and misleading advertisements during the period when the ammonium hydrogen sulphide curling solution was employed as a part of said advertised method of heatless permanent waving had the tendency and capacity to mislead and de-

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ceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements were true, and induced a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the said permanent wave in beauty parlors and salons wherein ammonium hydrogen sulphide curling solution was supplied by respondents and employed and used by the said beauty parlors and salons in performing said advertised method of heatless permanent waving.

CONCLUSION

The aforesaid acts and practices of the respondent, Irvin A. Willat, an individual, trading as Heatless Permanent Wave Co., 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.

The Commission finds, however, that the complaint should be dismissed as to the respondent, Arnold F. Willat, an individual, trading as Willat Production Co., since there is no evidence that he participated in the dissemination of the false advertisements forming the basis for this proceeding.

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 William S. Graham, counsel for 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 herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that the respondent, Irvin A. Willat, an individual, trading as Heatless Permanent Wave Co., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Irvin A. Willat, individually, and trading as Heatless Permanent Wave Co., or under any other name or names, his agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, or distribution of a method of heatless permanent waving which includes a curling solution composed of ammonium hydrogen sulphide, or any product of substantially similar composition or possessing substantially similar properties, whether described by the same name or

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by 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 any method of heatless permanent waving which includes the use of a curling solution of ammonium hydrogen sulphide constitutes a competent, safe, or scientific means of producing permanent waves in the hair of human subjects or that its use is harmless and will have no ill effects upon the human body; or which advertisement fails to reveal that the use of a curling solution of ammonium hydrogen sulphide in connection with any method of heatless permanent waving may cause local skin irritation, nausea, or vomiting or may cause convulsions, asphyxiation, or collapse in the absence of ventilation, and if introduced into the circulatory system in sufficient quantities and strength may result in systemic poisoning and death.

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 method of heatless permanent waving when used with a curling solution of ammonium hydrogen sulphide, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal that the use of a curling solution of ammonium hydrogen sulphide in connection with any method of heatless permanent waving may cause local skin irritation, nausea, or vomiting or may cause convulsions, asphyxiation, or collapse in the absence of ventilation, and if introduced into the circulatory system in sufficient quantities and strength may result in systemic poisoning and death.

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

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent, Arnold F. Willat.

Syllabus

IN THE MATTER OF

BEWLEY MILLS

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

Docket 4739. Complaint, Mar. 23, 1942—Decision, Sept. 21, 1942

Where a corporation, engaged in interstate sale and distribution of its "Red Anchor" poultry and stock feeds; by means of advertisements in newspapers and periodicals, radio continuities, and circulars, leaflets, pamphlets, and other advertising literature—

(a) Falsely represented and implied that its "Broiler Starter" and "Broiler Finisher" chick feed gave better and more economical results than other feeds; that its said "Starter" feed was perfectly balanced and contained every food element essential to insure a healthy start for baby chicks, and that, containing Vitamin D elements, it insured lower mortality, more rapid growth, sturdier and stronger chicks than other starter feeds;

(b) Represented that its "Egg Mash" feed, in combination with its "Hen Scratch," contained every essential food element, gave the highest feeding results, produced eggs of the highest quality, contained a greater proportion of essential ingredients than did other commercial feeds, increased hatchability of eggs and vigor and vitality of laying hens, and insured stronger chicks; contained all the essential food elements for greater production and was higher in Vitamin G content than were competitive products; and that numerous tests disclosed that it took less of said product to produce a given number of eggs than of other feeds, and that the amount used could be reduced and still produce more eggs than other egg mash feeds;

The facts being growing chicks do not need the extra vitamins and other extra ingredients purportedly found in its said growing mash unless such chicks have been receiving food deficient therein; and its various representations, as above set forth, were false;

(c) Falsely represented that better cattle and sheep were produced by feeding its "Cattle and Sheep Chunkets" than by feeding other products; and that its "All Mash Turkey Starter" contained a special mineral balance and a greater quantity of Vitamins A and D than other mashes, and that it would produce more No. 1 turkeys than others; and

(d) Represented that the use of its said feeds would result in highest production at lowest cost, and that they were perfectly balanced and thoroughly tested under actual feeding conditions so as to insure better and more economical results regardless of feeding conditions; and that they would give maximum production for the least cost over a long period of time;

The facts being its products were not perfectly balanced feeds for general use under all and any conditions, and use thereof would not bring such results; many elements such as location, air, water, soil, runs, housing, sunshine, cleanliness, and regularity in care and feeding contribute to the quality of poultry and eggs; growth and production of flocks and maximum results could not be "insured" or "guaranteed" through such use; compound and prepare a balanced feed for particular flock deficiencies, which may vary mate-

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rially, must be known, and the feed prepared accordingly; and its said products had not been thoroughly tested scientifically under actual feeding conditions by any system meeting requirements of State or Federal officials, or by experienced and competent poultrymen;

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 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. Jesse D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Bewley Mills, 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, Bewley Mills, is a corporation, organized and existing under and by virtue of the laws of the State of Texas and having its office and principal place of business at Fort Worth, Tex.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of poultry and stock feeds designated Bewley's Red Anchor Feeds. Respondent causes its said products, when sold, to be transported from its aforesaid 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 at all times mentioned herein has maintained a course of trade in said poultry and stock feeds 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 products, hereinafter named, by the United States mail and by various other means in commerce, as commerce is defined in

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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, which are likely to induce, directly or indirectly, the purchase of its said products in commerce as defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations, relating to the specific product hereinafter indicated, contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mail, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Red Anchor Broiler Starter and Broiler Finisher

This high quality growing feed is a favorite among many poultrymen in the Southwest who look ahead for future poultry profits. If you raise your chicks for broilers, try Red Anchor Broiler Starter and Broiler Finisher and see if you don't get better and more economical results.

Chicks may be held on Red Anchor Broiler Starter until ready for market with outstanding results. We recommend, however, that at the age of 6 to 7 weeks, chicks be changed to Red Anchor Broiler Finisher. This method of feeding lowers total feed cost and insures a better finished broiler.

Perfectly balanced and thoroughly tested under actual feeding conditions, Red Anchor Starting Feeds give the baby chicks everything they need to insure a healthy start in life; * * *

Bewley's Anchor Feeds

Bewley's Anchor Feeds Maximum Production at Minimum Cost.

Red Anchor Feeds are perfectly balanced and thoroughly tested under actual feeding conditions to insure better results for you regardless of your feeding need.

Haphazard feeding may produce eggs over a short period; but to get maximum production for least cost over a long period the Bewley's Anchor Feed route is the sure way.

Red Anchor Chick Starter

Anchor Chick Starter contains dried milk, cod liver oil, potassium iodine, manganese sulphate, insures lower mortality, more rapid growth, sturdier chicks.

Red Anchor Egg Mash

In addition to this quality Breeder Mash these birds should be fed a well balanced scratch feed, such as Red Anchor Hen Scratch. We believe that Red Anchor Egg Mash for Breeders contains every essential food element for maximum feeding results in producing hatching eggs of highest quality when fed in combination with Red Anchor Hen Scratch.

This quality feed contains increased proportions of certain feed ingredients, as compared to feeds we recommend for commercial egg production, that will increase hatchability, increase the vigor and vitality of the producer, and insure stronger chicks.

This quality mash feed contains both the scratch and mash ingredients, and we believe contains all essential food elements for maximum production.

We suggest that baby chicks be secured from breeding flocks that have been fed Red Anchor Egg Mash for Breeders, as we believe this quality feed will insure stronger chicks.

Red Anchor Egg Mash insures more eggs * * * eggs higher in quality; eggs with increased hatchability that will produce stronger chicks.

Red Anchor Egg Mash—high in Vitamin G content, which increases hatchability, insures stronger chicks and faster growth.

And in addition, numerous tests have proven that it requires less Bewley's Anchor Egg Mash to produce a given number of eggs than other egg mashes—that over a definite period the total amount of mash consumed will be cut down materially, and still production will be increased.

Cattle and Sheep Chunkets

For better results in the feed lot and on the range buy Red Anchor Cattle and Sheep Chunkets.

Bewley's Red Anchor All Mash Turkey Starter

It contains a high milk content and a special mineral balance; increased Vitamins A and D; and is guaranteed to insure more #1 birds for the market.

PAR. 4. Through the use of the statements and representations used in said false advertisements, as aforesaid, and others similar thereto not specifically set out herein, respondent has represented and implied:

1. That its products designated Red Anchor Broiler Starter and Broiler Finisher as feed for chicks raised for broilers gives better and more economical results than can be obtained from the use of other feeds; that its said product Red Anchor Broiler Finisher as a feed for chicks 6 to 7 weeks old, theretofore fed its product Red Anchor Broiler Starter, will cause total feed cost to be lower and produce better broilers than will other feeds; that its product Red Anchor Starter Feed is perfectly balanced and contains every food element essential to insure a healthy start in life for baby chicks.

2. That the use of its products designated Red Anchor Feeds will result in the highest production at the lowest cost for poultry; that said feeds are perfectly balanced, thoroughly tested under actual feeding conditions so as to insure better and more economical results regardless of feeding conditions; and that they will give maximum production for the least cost over a long period of time.

3. That its product Red Anchor Chick Starter, containing Vitamin D elements, insures lower mortality, more rapid growth, sturdier and stronger chicks than that obtained through the use of other starter feeds.

4. That its product Red Anchor Egg Mash Feed, in combination with its product Red Anchor Hen Scratch, contains every essential food element, gives the highest feeding results, and produces eggs of the highest quality; that it contains a greater proportion of certain essential feed ingredients than do other commercial feeds sold for egg

production; that it increases hatchability of eggs, the vigor and vitality of laying hens, and insures stronger chicks; that it contains all the essential food elements for greater production and is higher in vitamin G content than are competitive products; that numerous tests disclose that it takes less of said product to produce a given number of eggs than it takes of other feeds; and that the amount of such product used may be reduced and still produce more eggs than would be produced by other egg mash feeds.

5. That better cattle and sheep are produced by feeding its product Red Anchor Cattle and Sheep Chunkets than are produced by feeding other products.

6. That its product All Mash Turkey Starter contains a special mineral balance and a greater quantity of vitamins A and D than do other mashes, and that it will produce more No. 1 turkeys than will be produced through the use of other turkey mashes.

PAR. 5. The foregoing statements and representations contained in said advertisements aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, better and more economical results are not obtained through the use of respondent's products Red Anchor Broiler Starter and Red Anchor Broiler Finisher than are obtained through feeding chicks other similar feed products. The use of its product Red Anchor Broiler Finisher as a feed for chicks which have been fed its product Red Anchor Broiler Starter will not lower feed costs and will not produce better broilers than will be produced through the use of other similar feed products. Respondent's Starter Feed products are not perfectly balanced and have not been thoroughly tested under all actual feeding conditions, and they do not give baby chicks everything needed to insure a healthy start in life.

The use of respondent's products will not result in the highest production at the lowest cost for poultry; they are not perfectly balanced feeds for general use under all and any conditions, as there are many elements besides feed that are important in raising and handling poultry, such as location, air, water, soil, runs, housing, sunshine, cleanliness, and regularity in care and feeding, all of which contribute to the quality of poultry and eggs. The growth and production of flocks and maximum results cannot be "insured" or "guaranteed" through the use of respondent's said products. To compound and prepare a balanced feed for poultry, flock deficiencies must be known and the feed prepared to supply such deficiencies as exist in a particular flock. The deficiencies in a particular flock may vary materially from other flocks and require a different balance or different quantities of the essential ingredients. Such feed products have not been thoroughly tested scientifically under actual feeding conditions by any

system of tests meeting the requirements of State or Federal officials or by experienced and competent poultrymen.

The use of respondent's product Red Anchor Chick Starter will not result in a lower mortality rate, a more rapid growth, or sturdier or stronger chicks than will result from the feeding of other commercial poultry feeds.

Respondent's product Red Anchor Egg Mash Feed, used in combination with respondent's product Red Anchor Hen Scratch, does not contain every essential food element necessary to produce the highest feeding results, and it does not produce eggs of the highest quality. It does not contain a greater proportion of certain essential food ingredients than do other commercial feeds sold for egg production. It will not increase the hatchability of eggs, the vigor and vitality of laying hens or insure or produce stronger chicks. It does not contain all of the scratch and mash ingredients and essential food elements necessary to cause the highest egg production possible. Its use does not result in a higher egg production than that obtained through the use of other commercial poultry feeds. It does not take less of said product to produce a given number of eggs than it does of other commercial feeds.

Growing chicks do not need the extra vitamins and other extra ingredients purportedly found in respondent's product Red Anchor Growing Mash unless such chicks have been and are receiving food that is deficient in the vitamins and other extra ingredients purportedly found in respondent's said product.

Better cattle and sheep will not be produced through using respondent's product Red Anchor Cattle and Sheep Chunkets than will be produced by feeding other commercial feeds.

Respondent's Red Anchor All Mash Turkey Starter will not produce more No. 1 turkeys than will be produced through feeding other commercial turkey feeds.

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 poultry and stock feeds 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 erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 23, 1942, issued and thereafter served its complaint in this proceeding upon the respondent, Bewley Mills, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 13, 1942, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by the respondent and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that said Commission may proceed on said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon (including inferences which it may draw from said stipulated facts), and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent expressly waived the filing of 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, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Bewley Mills, is a corporation, organized and existing under and by virtue of the laws of the State of Texas and having its office and principal place of business at Fort Worth, Tex.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of poultry and stock feeds designated Bewley's Red Anchor Feeds. Respondent causes its said products, when sold, to be transported from its aforesaid 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 at all times mentioned herein has maintained a course of trade in said poultry and stock feeds 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, various advertisements concerning its products, hereinafter named, by 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, various advertisements concerning 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 various misleading and deceptive statements and representations, relating to the specific product hereinafter indicated, contained in said various advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mail, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Red Anchor Broiler Starter and Broiler Finisher

This high quality growing feed is a favorite among many poultrymen in the Southwest who look ahead for future poultry profits. If you raise your chicks for broilers, try Red Anchor Broiler Starter and Broiler Finisher and see if you don't get better and more economical results.

Chicks may be held on Red Anchor Broiler Starter until ready for market with outstanding results. We recommend, however, that at the age of 6 and 7 weeks, chicks be changed to Red Anchor Broiler Finisher. This method of feeding lowers total feed cost and insures a better finished broiler.

Perfectly balanced and thoroughly tested under actual feeding conditions, Red Anchor Starting Feeds give the baby chicks everything they need to insure a healthy start in life; * * *

Bewley's Anchor Feeds

Bewley's Anchor Feeds Maximum Production at Minimum Cost.

Red Anchor Feeds are perfectly balanced and thoroughly tested under actual feeding conditions to insure better results for you regardless of your feeding need.

Haphazard feeding may produce eggs over a short period; but to get maximum production for least cost over a long period the Bewley's Anchor Feed route is the sure way.

Red Anchor Chick Starter

Anchor Chick Starter contains dried milk, cod liver oil, potassium iodine, manganese sulphate, insures lower mortality, more rapid growth, sturdier chicks.

Red Anchor Egg Mash

In addition to this quality Breeder Mash these birds should be fed a well balanced scratch feed, such as Red Anchor Hen Scratch. We believe that Red Anchor Egg Mash for Breeders contains every essential food element for maximum feeding results in producing hatching eggs of highest quality when fed in combination with Red Anchor Hen Scratch.

This quality feed contains increased proportions of certain feed ingredients, as compared to feeds we recommend for commercial egg production, that will increase hatchability, increase the vigor and vitality of the producer, and insure stronger chicks.

This quality mash feed contains both the scratch and mash ingredients, and we believe contains all essential food elements for maximum production.

We suggest that baby chicks be secured from breeding flocks that have been fed Red Anchor Egg Mash for Breeders, as we believe this quality feed will insure stronger chicks.

Red Anchor Egg Mash Insures more eggs * * * eggs higher in quality; eggs with increased hatchability that will produce stronger chicks.

Red Anchor Egg Mash—high in Vitamin G content, which increases hatchability, insures stronger chicks and faster growth.

And in addition, numerous tests have proven that it requires less Bewley's Anchor Egg Mash to produce a given number of eggs than other egg mashes—that over a definite period the total amount of mash consumed will be cut down materially, and still production will be increased.

Cattle and Sheep Chunkets

For better results in the feed lot and on the range buy Red Anchor Cattle and Sheep Chunkets.

Bewley's Red Anchor All Mash Turkey Starter

It contains a high milk content and a special mineral balance; increased Vitamins A and D; and is guaranteed to insure more #1 birds for the market.

PAR. 4. Through the use of the statements and representations used in said advertisements, as aforesaid, and others similar thereto not specifically set out herein, respondent has represented and implied:

1. That its products designated Red Anchor Broiler Starter and Broiler Finisher as feed for chicks raised for broilers give better and more economical results than can be obtained from the use of other feeds; that its said product Red Anchor Broiler Finisher as a feed for chicks 6 to 7 weeks old, theretofore fed its product Red Anchor Broiler Starter, will cause total feed cost to be lower and produce better broilers than will other feeds; that its product Red Anchor Starter Feed is perfectly balanced and contains every food element essential to insure a healthy start in life for baby chicks.

2. That the use of its products designated Red Anchor Feeds will result in the highest production at the lowest cost for poultry; that said feeds are perfectly balanced, thoroughly tested under actual

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 poultry and stock feeds 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, various advertisements concerning its products, hereinafter named, by 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, various advertisements concerning 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 various misleading and deceptive statements and representations, relating to the specific product hereinafter indicated, contained in said various advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mail, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Red Anchor Broiler Starter and Broiler Finisher

This high quality growing feed is a favorite among many poultrymen in the Southwest who look ahead for future poultry profits. If you raise your chicks for broilers, try Red Anchor Broiler Starter and Broiler Finisher and see if you don't get better and more economical results.

Chicks may be held on Red Anchor Broiler Starter until ready for market with outstanding results. We recommend, however, that at the age of 6 and 7 weeks, chicks be changed to Red Anchor Broiler Finisher. This method of feeding lowers total feed cost and insures a better finished broiler.

Perfectly balanced and thoroughly tested under actual feeding conditions, Red Anchor Starting Feeds give the baby chicks everything they need to insure a healthy start in life; * * *

Bewley's Anchor Feeds

Bewley's Anchor Feeds Maximum Production at Minimum Cost.

Red Anchor Feeds are perfectly balanced and thoroughly tested under actual feeding conditions to insure better results for you regardless of your feeding need.

Haphazard feeding may produce eggs over a short period; but to get maximum production for least cost over a long period the Bewley's Anchor Feed route is the sure way.

Red Anchor Chick Starter

Anchor Chick Starter contains dried milk, cod liver oil, potassium iodine, manganese sulphate, insures lower mortality, more rapid growth, sturdier chicks.

Red Anchor Egg Mash

In addition to this quality Breeder Mash these birds should be fed a well balanced scratch feed, such as Red Anchor Hen Scratch. We believe that Red Anchor Egg Mash for Breeders contains every essential food element for maximum feeding results in producing hatching eggs of highest quality when fed in combination with Red Anchor Hen Scratch.

This quality feed contains increased proportions of certain feed ingredients, as compared to feeds we recommend for commercial egg production, that will increase hatchability, increase the vigor and vitality of the producer, and insure stronger chicks.

This quality mash feed contains both the scratch and mash ingredients, and we believe contains all essential food elements for maximum production.

We suggest that baby chicks be secured from breeding flocks that have been fed Red Anchor Egg Mash for Breeders, as we believe this quality feed will insure stronger chicks.

Red Anchor Egg Mash insures more eggs * * * eggs higher in quality; eggs with increased hatchability that will produce stronger chicks.

Red Anchor Egg Mash—high in Vitamin G content, which increases hatchability, insures stronger chicks and faster growth.

And in addition, numerous tests have proven that it requires less Bewley's Anchor Egg Mash to produce a given number of eggs than other egg mashes—that over a definite period the total amount of mash consumed will be cut down materially, and still production will be increased.

Cattle and Sheep Chunkets

For better results in the feed lot and on the range buy Red Anchor Cattle and Sheep Chunkets.

Bewley's Red Anchor All Mash Turkey Starter

It contains a high milk content and a special mineral balance; increased Vitamins A and D; and is guaranteed to insure more #1 birds for the market.

PAR. 4. Through the use of the statements and representations used in said advertisements, as aforesaid, and others similar thereto not specifically set out herein, respondent has represented and implied:

1. That its products designated Red Anchor Broiler Starter and Broiler Finisher as feed for chicks raised for broilers give better and more economical results than can be obtained from the use of other feeds; that its said product Red Anchor Broiler Finisher as a feed for chicks 6 to 7 weeks old, theretofore fed its product Red Anchor Broiler Starter, will cause total feed cost to be lower and produce better broilers than will other feeds; that its product Red Anchor Starter Feed is perfectly balanced and contains every food element essential to insure a healthy start in life for baby chicks.

2. That the use of its products designated Red Anchor Feeds will result in the highest production at the lowest cost for poultry; that said feeds are perfectly balanced, thoroughly tested under actual

feeding conditions so as to insure better and more economical results regardless of feeding conditions; and that they will give maximum production for the least cost over a long period of time.

3. That its product Red Anchor Chick Starter, containing vitamin D elements, insures lower mortality, more rapid growth, sturdier and stronger chicks than that obtained through the use of other starter feeds.

4. That its product Red Anchor Egg Mash feed, in combination with its product Red Anchor Hen Scratch, contains every essential food element, gives the highest feeding results, and produces eggs of the highest quality; that it contains a greater proportion of certain essential feed ingredients than do other commercial feeds sold for egg production; that it increases hatchability of eggs, the vigor and vitality of laying hens, and insures stronger chicks; that it contains all the essential food elements for greater production and is higher in vitamin G content than are competitive products; that numerous tests disclose that it takes less of said product to produce a given number of eggs than it takes of other feeds; and that the amount of such product used may be reduced and still produce more eggs than would be produced by other egg mash feeds.

5. That better cattle and sheep are produced by feeding its product Red Anchor Cattle and Sheep Chunkets than are produced by feeding other products.

6. That its product All Mash Turkey Starter contains a special mineral balance and a greater quantity of vitamins A and D than do other mashes, and that it will produce more No. 1 turkeys than will be produced through the use of other turkey mashes.

PAR. 5. The foregoing statements and representations contained in said advertisements aforesaid are grossly exaggerated and misleading. In truth and in fact, better and more economical results are not obtained through the use of respondent's products Red Anchor Broiler Starter and Red Anchor Broiler Finisher than are obtained through feeding chicks other similar feed products. The use of its product Red Anchor Broiler Finisher as a feed for chicks which have been fed its product Red Anchor Broiler Starter will not lower feed costs and will not produce better broilers than will be produced through the use of other similar feed products. Respondent's Starter Feed products are not perfectly balanced and have not been thoroughly tested under all actual feeding conditions, and they do not give baby chicks everything needed to insure a healthy start in life.

The use of respondents' products will not result in the highest production at the lowest cost for poultry; they are not perfectly balanced feeds for general use under all and any conditions, as there are many

Findings

elements besides feed that are important in raising and handling poultry, such as location, air, water, soil, runs, housing, sunshine, cleanliness, and regularity in care and feeding, all of which contribute to the quality of poultry and eggs. The growth and production of flocks and maximum results cannot be "insured" or "guaranteed" through the use of respondent's said products. To compound and prepare a balanced feed for poultry, flock deficiencies must be known and the feed prepared to supply such deficiencies as exist in a particular flock. The deficiencies in a particular flock may vary materially from other flocks and require a different balance or different quantities of the essential ingredients. Said feed products have not been thoroughly tested scientifically under actual feeding conditions by any system of tests meeting the requirements of State or Federal officials or by experienced and competent poultrymen.

The use of respondent's product Red Anchor Chick Starter will not result in a lower mortality rate, a more rapid growth, or sturdier or stronger chicks than will result from the feeding of other commercial poultry feeds.

Respondent's product Red Anchor Egg Mash Feed, used in combination with respondent's product Red Anchor Hen Scratch, does not contain every essential food element necessary to produce the highest feeding results, and it does not produce eggs of the highest quality. It does not contain a greater proportion of certain essential food ingredients than do other commercial feeds sold for egg production. It will not increase the hatchability of eggs, the vigor and vitality of laying hens, or insure or produce stronger chicks. It does not contain all of the scratch and mash ingredients and essential food elements necessary to cause the highest egg production possible. Its use does not result in a higher egg production than that obtained through the use of other commercial poultry feeds. It does not take less of said product to produce a given number of eggs than it does of other commercial feeds.

Growing chicks do not need the extra vitamins and other extra ingredients purportedly found in respondent's product Red Anchor Growing Mash unless such chicks have been and are receiving food that is deficient in the vitamins and other extra ingredients purportedly found in respondent's said product.

Better cattle and sheep will not be produced through using respondent's product Red Anchor Cattle and Sheep Chunkets than will be produced by feeding other commercial feeds.

Respondent's Red Anchor All Mash Turkey Starter will not produce more No. 1 turkeys than will be produced through feeding other commercial turkey feeds.

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PAR. 6. The use by the respondent of the aforesaid deceptive and misleading statements, representations, and advertisements disseminated as aforesaid with respect to its said poultry and stock feeds 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 substantial quantities of respondent's said products.

CONCLUSION

The Commission finds that 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 and a stipulation as to the facts entered into by counsel for respondent herein and counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Bewley Mills, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its poultry and stock feeds designated Red Anchor Feeds, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference:

(a) That its products designated Red Anchor Broiler Starter and Broiler Finisher as feed for chicks raised for broilers give better and more economical results than can be obtained from the use of other feeds; that its said product Red Anchor Broiler Finisher as a feed for chicks 6 to 7 weeks old, theretofore fed its product Red Anchor Broiler Starter, will cause total feed cost to be lower and produce

better broilers than will other feeds; that its product Red Anchor Starter Feed is perfectly balanced and contains every food element essential to insure a healthy start in life for baby chicks.

(b) That the use of its products designated Red Anchor Feeds will result in the highest production at the lowest cost for poultry; that said feeds are perfectly balanced, thoroughly tested under actual feeding conditions so as to insure better and more economical results regardless of feeding conditions; and that they will give maximum production for the least cost over a long period of time.

(c) That its product Red Anchor Chick Starter, containing Vitamin D elements, insures lower mortality, more rapid growth, sturdier and stronger chicks than are obtained through the use of other starter feeds.

(d) That its product Red Anchor Egg Mash feed, in combination with its product Red Anchor Hen Scratch, contains every essential food element, gives the highest feeding results, and produces eggs of the highest quality, that it contains a greater proportion of certain essential feed ingredients than do other commercial feeds sold for egg production; that it increases hatchability of eggs, the vigor and vitality of laying hens, all insures stronger chicks; that it contains all the essential food elements for greater production and is higher in vitamin G content than are competitive products; that numerous tests disclose that it takes less of said product to produce a given number of eggs than it takes of other feeds; and that the amount of such product used may be reduced and still produce more eggs than would be produced by other egg mash feeds.

(e) That better cattle and sheep are produced by feeding its product Red Anchor Cattle and Sheep Chunkets than are produced by feeding other products.

(f) That its product All Mash Turkey Starter contains a special mineral balance and a greater quantity of Vitamins A and D than do other mashes, and that it will produce more No. 1 turkeys than will be produced through the use of other turkey mashes.

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 its said poultry and stock designated Bewley's Red Anchor Feeds, which advertisement contains any of the representations prohibited in paragraph 1.

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

IN THE MATTER OF

THE R. L. WATKINS COMPANY

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

Docket \$596. Complaint, Sept. 19, 1938—Decision, Sept. 28, 1942

Where a corporation, engaged in the manufacture, among other things, of its "Dr. Lyon's Tooth Powder," and in the competitive interstate sale and distribution thereof; by advertisements in numerous newspapers and periodicals of wide interstate, and in some cases nation-wide circulation, and through radio broadcasts, advertising posters and billboards, and streetcar and subway cards—

- (a) Implied that its said "Dr. Lyon's Tooth Powder" was substantially similar to that used by dentists through featuring the statement "Do as Your Dentist Does—Use Powder," or "Do as your Dentist Does When He Cleans Your Teeth—Use Powder," and aforesaid name and product as therein depicted and set forth;

The facts being that while the majority of dentists probably do use powder in cleaning their patients' teeth, such powder is almost invariably pumice or silix which are both highly abrasive and, if used regularly, would result in serious damage to the teeth; calcium carbonate, active ingredient of its said powder—used only in exceptional instances by dentists to polish the teeth after cleaning with pumice or silix—is much less abrasive and effective for cleaning the teeth; and product therefore is not comparable to powder used by dentists, either as to composition or effectiveness;

- (b) Falsely represented that its said powder was an effective antacid and would correct acid mouth; and
- (c) Represented that its product was free from all grit and could not possibly injure or scratch the tooth enamel;

The facts being that said representations were exaggerated and misleading, its said product, occasionally at least, containing particles of quartz or grit which might scratch the enamel;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said powder possessed properties which it did not, and of thereby causing its purchase because of such belief; whereby 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.

As respects a contention that the testimony of certain consumer witnesses, namely, 13 club women and housewives living in or near Washington, D. C., of whom 7 testified that seller's advertising, and particularly the slogan "Do As Your Dentist Does—Use Powder," implied that the powder used by dentists in cleaning their patients' teeth was substantially the same as seller's tooth powder, and in the case of some that they would understand from the advertising that the powder used by the dentist was in fact said powder, the others testifying to a contrary understanding—could not be accepted as indicative of the impression gathered from advertising in question by the public generally, in view of testimony of four professors of advertising

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and marketing in certain prominent universities in the East and Midwest who expressed the opinion that the consumer witnesses were not truly representative of the general public and did not constitute an accurate cross section of the purchasing public throughout the country: Testimony in question, irrespective of whether or not such witnesses represented an accurate cross section of the entire purchasing public, did indicate that in a substantial portion of such public, seller's advertisements implied that its product was substantially similar to the powder used by dentists.

As respects contention—with regard to advertiser's claim that its tooth powder was free from all grit and could not possibly injure, or scratch the tooth enamel, and the opinion of experts that it would, based on Bureau of Standards' and other tests which disclosed that some of the samples contained quartz particles or grit—that presence of such grit was accidental and that while it might be found in one sample it might be entirely absent from a number of others; that siliceous material commonly found in chalk in its natural form sometimes is not removed in the precipitation of chemical calcium carbonate and that the United States Pharmacopoeia allows a tolerance for the presence of siliceous material therein: Assuming the correctness of said contentions, it seemed clear that the powder in question, occasionally at least, contained particles of quartz or grit which might scratch the enamel, so that representations that it was "free from all grit" and could not "possibly injure or scratch the tooth enamel" were exaggeration and misleading.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Merle B. Lyon and *Mr. Randolph W. Branch* for the Commission.
Rogers, Hoge & Hills, of New York City, for respondent.

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

¹The complaint is published as amended by the following stipulation, approved by the Commission on September 18, 1939, to wit:

It is hereby stipulated and agreed, by and between *W. T. Kelley*, Chief Counsel for the Federal Trade Commission, and *Rogers, Ramsay and Hoge*, attorneys for the respondent in the above-entitled case, that, subject to the approval of the Federal Trade Commission, the complaint heretofore issued in the above-entitled case be amended in the following respects, to wit:

1. By the addition to par. 5 of the following words:

"3. That *Dr. Lyon's Tooth Powder* contains no acid, grit or pumice, and cannot possibly injure or scratch the tooth enamel, and is a safe and harmless dentifrice for home use."

2. By the addition to par. 6 of the following words:

"*Dr. Lyon's Tooth Powder* does contain grit and quartz particles, and a paste made from *Dr. Lyon's Tooth Powder* mixed with water will scratch glass, which is harder than tooth enamel. The grit contained in *Dr. Lyon's Tooth Powder* has the tendency and capacity to injure or scratch the tooth enamel, and *Dr. Lyon's Tooth Powder* is therefore not a safe or harmless dentifrice for home use."

It is further stipulated and agreed, That the answer of the respondent heretofore filed shall be deemed to be addressed to pars. 5 and 6 of the complaint as hereby amended with the same force and effect as if those same paragraphs were originally constituted as amended by this stipulation.

It is further stipulated and agreed, That all testimony adduced and all evidence admitted at hearings heretofore held in the above-entitled proceeding be received and considered insofar as same are material and competent in any findings of fact hereafter made herein, in like manner and to the same effect as though said testimony and evidence had been received at hearings held upon the charges contained in the complaint as amended by this stipulation, saving, however, to the respondent its right to rebut such testimony or evidence by any proper means at such subsequent hearings as may be held herein.

Trade Commission, having reason to believe that The R. L. Watkins 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 I. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal business office at 170 Varick Street, New York, N. Y., and with its principal factory at Newark, N. J. Respondent is now, and for many years last past has been engaged in the manufacture, sale, and distribution of various cosmetic and proprietary products, including, among others, a dentifrice known as "Dr. Lyon's Tooth Powder."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused its said product "Dr. Lyon's Tooth Powder," when sold, to be transported from its factory at Newark, N. J., to purchasers located in States of the United States other than the State of origin of such shipments, and also in the District of Columbia. There is now, and has been during all the times herein mentioned, a course of trade in the aforementioned product sold by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now and has been in substantial competition with other corporations, and with persons, firms and partnerships engaged in the sale and distribution of tooth powders, tooth pastes, and other products intended and used for cleansing teeth, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its tooth powder, respondent has caused false advertisements containing representations and claims with respect to the properties of said tooth powder and the results that may be expected to be obtained upon the use thereof, to be disseminated in commerce as defined in the Federal Trade Commission Act, through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States; through continuities broadcast from radio stations which have power to, and do, convey the programs emanating therefrom to the listeners thereto located in the various States of the United States; and through other means. Among and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid, are the following:

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DO AS YOUR DENTIST DOES—USE POWDER.
ALL CLEANSING PROPERTIES. NO ACID, NO GRIT OR PUMICE. Cannot possibly injure or scratch.

COSTS LESS TO USE.

Nothing else cleans and polishes teeth more quickly and leaves them more naturally white—than **POWDER.**

That is why your dentist, when cleaning your teeth, as you know—almost always uses powder.

As it is only the powder part of most dentifrices that cleans, a dentifrice that is all powder just naturally cleans effectively. Dr. Lyon's Tooth Powder is **ALL POWDER**—all cleansing properties.

For over seventy years many dentists everywhere have prescribed Dr. Lyon's Tooth Powder because normal teeth simply cannot remain dull and dingy looking when it is used. Dr. Lyon's cleans and polishes the teeth in a harmless and practical way that leaves them sparkling with natural brightness. It leaves your teeth feeling so much cleaner, your mouth so refreshed and your breath so sweet and pure.

Free from all acids, grit or pumic, it cannot possibly injure or scratch the tooth enamel as years of constant use have shown. Even as a neutralizer in acid mouth conditions, Dr. Lyon's is an effective antacid.

Dr. Lyon's Tooth Powder, is more economical to use. In the same size and price class Dr. Lyon's outlasts tooth pastes two to one. Even a small package will last you for months.

To have gleaming, naturally white teeth, a smile that reveals personality and charm, try cleaning your teeth the way your dentist does when you go to him—that is, with powder. Use the way virtually every dentist you have ever gone to uses to make teeth naturally, sparkling clear. Nothing else, we believe, will give you gleaming and lustrous teeth more quickly and easily than powder—your dentist's way of cleaning and beautifying teeth.

Dr. Lyon's Tooth Powder is all powder—100% cleansing properties. This is more than twice the cleansing properties of tooth pastes.

Dentists everywhere recommend Dr. Lyon's Tooth Powder, because—teeth simply cannot remain dull and film coated when it is used. Dr. Lyon's cleans off all stains and polishes the teeth in a harmless and practical way that leaves them sparkling—many shades whiter.

Dr. Lyon's Tooth Powder keeps your teeth really clean, and clean teeth mean firm, healthy gums and the least possible tooth decay.

Dr. Lyon's Tooth Powder is not only doubly efficient, but it costs only half as much to use. Even a small package lasts twice as long as a tube of tooth paste.

Nothing else cleans and polishes teeth so remarkably as powder.

And the proof is in the fact that powder is the way dentists clean teeth.

To have gleaming white teeth, a smile that charms and attracts, try cleaning your teeth at home the way your dentist does when you go to him—with powder.

You will find that powder whitens your teeth like no other way you have ever tried.

People by the thousands are quitting less effective ways of tooth cleaning for their dentists' way. People by the thousands are discarding ordinary ways of tooth cleaning and adopting a quick new way that makes teeth white and sparkling, removes film almost instantly.

You will find a whiteness you have probably despaired of ever finding in your teeth—a brilliance that you have envied in others but never managed to gain yourself.

Get a can of Dr. Lyon's Tooth Powder—brush your teeth with it and look in your mirror. Nine out of ten who do this never go back to less effective, less scientific ways of tooth cleansing.

It is commonly agreed that nothing else cleans teeth, lightens them, brightens them like powder.

Powder is the way practically every dentist in the world cleans teeth.

When you go to your dentist to have your teeth really transformed in appearance almost invariably he uses powder to do it.

Millions are finding a quicker, better way to clean and brighten teeth, a way that makes dull, off-color teeth a folly.

You can do wonders with your teeth, if you'll only try cleaning your teeth the way practically every dentist you have gone to does—with powder. Try it. Get a can of Dr. Lyon's Tooth Powder.

A way that would actually do something for teeth that, regardless of brushing, remain grey, dull and lustreless.

Always remember, when your dentist cleans your teeth, he uses powder.

Your dentist will tell you that nothing else cleans, whitens and brightens so quickly as powder.

No other way is so quick and effective as powder.

Nothing else beautifies and polishes teeth so effectively as powder.

An interesting new discovery has recently been made. All you do is clean your teeth at home the way the dentist almost invariably cleans them.

A new scientific way to make their teeth gleaming and white.

You will find it gives dull teeth a sparkle and brilliance like nothing else does.

Your dentist knows that powder cleans more effectively and scientifically than anything else.

There is now a way for every woman to win sparkling teeth and a smile that will make her charming and sought after. It is the way your dentist almost invariably cleans your teeth—with powder.

A way millions of users say gives teeth really clear, sparkling brightness such as can be obtained in no other way.

The primary representation used by the respondent in its advertising disseminated as aforesaid, is the picturization of a can of Dr. Lyon's Tooth Powder accompanied by the slogan, "Do as Your Dentist Does—Use Powder." In the majority of instances, this slogan and picturization are accompanied by other representations, but in some cases they are used alone.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other similar statements not herein set out, all of which purport to be descriptive of respondent's tooth powder and its effectiveness in cleansing the teeth and mouth, the respondent has falsely represented, directly and by inference and implication, among other things (1) that Dr. Lyon's Tooth Powder possesses properties and effectiveness identical with and comparable to the preparations used by dentists, and that said tooth powder is essentially the same as the preparations used by dentists in cleansing teeth; (2) that tooth powders, including Dr. Lyon's Tooth Powder, are more

effective for brushing, polishing, and cleansing teeth than tooth pastes; (3) that Dr. Lyon's Tooth Powder neutralizes acid mouth conditions, is an antacid, and has substantial value for other purposes than cleansing the teeth; (4) that the use of Dr. Lyon's Tooth Powder will make all normal sets of teeth white and brilliant; (5) that Dr. Lyon's Tooth Powder is a deodorant; (6) that Dr. Lyon's Tooth Powder is more economical to purchase and use than competitive tooth pastes; (7) that the use of tooth powder in cleansing teeth is a new and scientific discovery; (8) and that the use of Dr. Lyon's Tooth Powder gives results equivalent to professional dental prophylaxis; (9) that Dr. Lyon's Tooth Powder contains no acid, grit, or pumice, and cannot possibly injure or scratch the tooth enamel, and is a safe and harmless dentifrice for home use.

Further, through the use of the statements and representations hereinabove set forth, the respondent has unfairly disparaged various competitive preparations used in cleansing the teeth, and has falsely represented (1) that competitive dentifrices, including paste, contain acid, grit, pumice; (2) that acid ingredients in competitive dentifrices are harmful; (3) that competitive dentifrices, including paste, injure, scratch, and destroy tooth enamel, tooth structure, and mouth tissues; (4) that the use of competitive dentifrices is unsafe and dangerous.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and untrue, and constitute false advertisements. The true facts are that Dr. Lyon's Tooth Powder does not have any of the qualities or achieves any of the results claimed and represented as hereinabove described. Dr. Lyon's Tooth Powder does not possess properties or effectiveness identical with or comparable to the preparations generally used by dentists in cleansing teeth and is neither essentially nor basically the same as such preparations. Dr. Lyon's Tooth Powder is a chalk powder. In cleansing teeth dentists generally use a pumice, silica, or some similar substance in a powdered form, to which is added glycerine, water, or some similar vehicle and the whole worked into a paste which is then applied through various abrasive processes. Such substances are essentially different from chalk powders and are more effective in cleansing the teeth than chalk powders or pastes, but should be used only infrequently since they are abrasive and may be harmful to the enamel unless carefully used by an experienced dentist or technician. Tooth powders, including Dr. Lyon's Tooth Powder, are no more effective for brushing, polishing or cleansing the teeth than tooth pastes. In practice dry powder is not used in cleansing teeth but is made into a paste or semipaste when

applied to the teeth. Tooth powders having a chalk base are very similar in properties to tooth pastes. Dr. Lyon's Tooth Powder is not antiacid and is not effective so as to neutralize acid mouth conditions. It does not have substantial value for oral hygiene purposes other than cleansing the teeth. The normal acid-alkali balance of the blood or other bodily fluids cannot be easily changed and neither Dr. Lyon's Tooth Powder nor any other dentifrice will have any beneficial effect toward changing this balance. Neither Dr. Lyon's Tooth Powder nor any other dentifrice will materially alter the chemical reaction of the saliva in the mouth. The use of Dr. Lyon's Tooth Powder will not make all normal sets of teeth white and brilliant. Many normal sets of teeth vary in all shades of color and translucency ranging from brilliant to dull and these shades cannot be altered or changed by the use of any tooth powder or paste. Dr. Lyon's Tooth Powder is not a competent and effective deodorant. It does maintain sufficient oil of wintergreen to temporarily mask the breath or other unpleasant odors in some cases, but it is in no sense a competent or effective deodorant. Dr. Lyon's Tooth Powder is no more economical to purchase and use than tooth paste. The use of tooth powder, including Dr. Lyon's Tooth Powder, in cleansing teeth is not a new or scientific discovery. In fact, tooth powders were generally known and used prior to the development of tooth pastes. The use of Dr. Lyon's Tooth Powder does not give results equivalent to professional dental prophylaxis. The powder contained in Dr. Lyon's Tooth Powder is in no sense comparable in properties or effect to the various preparations used by dental hygienists in cleansing teeth. While both respondent's tooth powder and the substances used by dentists are in powder form they are otherwise dissimilar.

Competing dentifrices, including tooth pastes, do not generally contain grit or pumice and such acid ingredients as are contained in said preparations are not harmful. Competitive dentifrices do not injure, scratch, or destroy tooth enamel, tooth structure, or mouth tissues to any greater extent than does respondent's tooth powder. The use of competitive dentifrices, including tooth pastes, is neither unsafe nor dangerous. All tooth powders and pastes are essentially similar in properties and effect.

Dr. Lyon's Tooth Powder is no more concentrated or economical to use than other competing preparations, and its use does not accomplish results that cannot be accomplished by other competing preparations. Any cleansing effect accomplished by brushing the teeth with tooth paste or powder is due primarily to the mechanical action of the brush and not the ingredients contained in the tooth paste or powder.

Dr. Lyon's Tooth Powder does not contain grit and quartz particles, and a paste made from Dr. Lyon's Tooth Powder mixed with water will scratch glass, which is harder than tooth enamel. The grit contained in Dr. Lyon's Tooth Powder has the tendency and capacity to injure or scratch the tooth enamel, and Dr. Lyon's Tooth Powder is therefore not a safe or harmless dentifrice for home use.

PAR. 7. The use of the aforesaid false advertising disseminated in the manner above described, induces or is likely to induce, directly or indirectly, the purchase of a cosmetic, to wit, Dr. Lyon's Tooth Powder.

PAR. 8. In addition to the false and misleading representations and claims made by the respondent regarding the efficacy in use of the said product, Dr. Lyon's Powder, as hereinabove set forth, respondent has disseminated other false advertisements in the same manner and to the same extent as hereinabove set out. One such advertisement read as follows:

Accept the Very Latest in Jewelry
Genuine 22-Karat Gold Plated
LOVE CHARM BRACELET
\$1.50 value, Now only 10¢
and one box front from Dr. Lyon's
TOOTH POWDER.

Through the use of the aforesaid advertisement and the representations contained therein, respondent represents to members of the purchasing public that said bracelet has a normal and customary retail value of \$1.50 and that extra initial charms therefor can be secured with one box front per initial at no additional charge. In truth and in fact the bracelet so advertised is a chain bracelet to which are suspended heart-shaped "charms", each bearing an initial or letter. The total cost to the respondent is not more than 10 cents for each bracelet complete with charms. Said bracelet does not have a normal or customary retail value of \$1.50 or any amount approaching that sum and the respondent recovers the full cost of the bracelet and all charms that may be supplied in connection therewith when it obtains the sum of 10 cents from each order.

PAR. 9. There are among respondent's competitors many who manufacture, sell, and distribute tooth powders and tooth pastes and other products designed, intended, and sold for the purpose of cleansing and beautifying the teeth who do not in any way misrepresent the qualities, effectiveness or character of their respective products; and there are also many manufacturers and distributors of jewelry products, premiums, and advertising novelties intended and sold for use as premiums or for personal adornment who do not in any way misrepresent the value of such merchandise.

PAR. 10. The use of the aforesaid false and misleading statements, representations, and advertisements by the respondent in designating or describing its said product, Dr. Lyon's Tooth Powder and the effectiveness of said product in the cleansing and care of the teeth, in offering for sale and in selling its said product, had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true, and that said product possesses the properties represented and will in truth accomplish the results claimed. Furthermore, the representation that the value of the so-called "Love Charm Bracelet" offered by the respondent as an advertising premium for 10 cents in conjunction with a box front from Dr. Lyon's Tooth Powder is \$1.50, was and is calculated to, and had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representation is true, and that said premium is worth an amount greatly in excess of the price at which it is offered and sold by respondent.

PAR. 11. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said product, Dr. Lyon's Tooth Powder, with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling tooth powders, tooth pastes, and similar products or other products designed, intended and sold for use in the cleansing and care of the teeth, and who truthfully represent the effectiveness and qualities of their respective products.

Furthermore, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, a number of the consuming public has purchased a substantial volume of the so-called "Love Charm Bracelets" offered as premiums by the respondent, with the result that trade has been unfairly diverted to the respondent from competitors engaged in the manufacture and sale of jewelry, advertising novelties and premiums, and who truthfully represent the value of their said merchandise.

As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 12. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 19, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, The R. L. Watkins 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 that act (the complaint being subsequently amended by a stipulation executed by the respondent and the attorney for the Commission and approved by the Commission). After the filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before 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 hearing before the Commission on the complaint as amended, the answer thereto, 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. The Commission, having duly considered the matter, directed on March 19, 1941, that the case be reopened for the taking of certain additional testimony and other evidence, and pursuant thereto additional testimony and other evidence were offered before the trial examiner in support of and in opposition to the allegations of the complaint, and such additional testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding again came on for hearing before the Commission upon the entire record, supplemental report of the trial examiner upon the evidence, and the exceptions to such report, supplemental briefs in support of and in opposition to the complaint, and further oral argument; and the Commission, having duly considered the matter, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts, and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The R. L. Watkins Co., is a corporation organized, existing, and doing business under and by virtue

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of the laws of the State of Ohio, with its principal business office at 170 Varick Street, New York, N. Y., and with its principal factory at Newark, N. J. Respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of various cosmetics and proprietary products, including, among other things, a dentifrice known as Dr. Lyon's Tooth Powder.

PAR. 2. Respondent causes and has caused its product, Dr. Lyon's Tooth Powder, when sold, to be transported from its factory in the State of New Jersey to purchasers thereof located in the several 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 product in commerce among and between the several States of the United States, and in the District of Columbia.

PAR. 3. In the sale and distribution of its product respondent is, and 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 several States of the United States, and in the District of Columbia, of tooth powders, tooth pastes, and other products intended and used for cleaning the teeth.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its tooth powder, respondent has disseminated many advertisements throughout the United States. Advertisements have been inserted in numerous newspapers and periodicals published at various points throughout the country, and having wide interstate circulation, some of them having Nation-wide circulation. Respondent has also made extensive use of the radio as an advertising medium, causing programs to be broadcast over radio networks which carry such programs to members of the purchasing public located in many States of the United States. Frequent use has also been made by respondent of advertising posters and billboards, and of advertising cards placed in streetcars and subways operating in various cities throughout the United States.

PAR. 5. The principal statement or slogan featured by respondent in its newspaper and magazine advertisements, and on its advertising posters and cards is, "DO AS YOUR DENTIST DOES—USE POWDER" (Commission's exhibits 2, 4-B, 5, 7, 8, 11, 14, 16, and others), or, "DO AS YOUR DENTIST DOES WHEN HE CLEANS YOUR TEETH—USE POWDER" (Commission's exhibits 9, 10, 12, 13, 15, and others). These statements appear in prominent and conspicuous type, and are usually accompanied by a picturization of a can of respondent's tooth powder. The name "Dr. Lyon's Tooth Powder"

appears on the picturization, and is otherwise prominently displayed in the advertisements.

This same theme is emphasized also in respondent's radio programs. Typical of the statements used in such programs are the following:

There is now a way to reveal the natural brightness and clear color of your teeth. A way so simple and effective that *no* woman need handicap her allure a day longer with teeth improperly cleansed and thus dull and unattractive.

It is the way your dentist almost invariably cleans your teeth when you go to him to have them made gleaming and beautiful. That is *WITH POWDER*. Thousands of people—everywhere—are adopting *POWDER*—their dentist's way of cleaning teeth.

Get a can of *Dr. Lyon's Tooth Powder* tomorrow at any drug or department store. Try it. One look in the mirror will show you what it does. (Commission's Exhibit 19-E.)

* * * * *

To have teeth that are sparkling and naturally white, a smile that charms and attracts, do what people on all sides are doing. Try cleaning your teeth in your own home the way your dentist almost invariably does when you go to him—clean them *WITH POWDER*.

No matter what you have heard about "this" or "that" dentifrice, the fact remains that your dentist knows more about cleaning and beautifying teeth than anyone else. *And he almost invariably uses powder*. He'll probably tell you, if you ask him, that nothing cleans and polishes teeth more effectively than powder. (Commission's Exhibit 20-C.)

* * * * *

You've heard remarks like these. "Jane would be a peach of a girl if it weren't for her teeth!" "Jim has a wonderful personality—but did you notice his teeth?"

Make *sure* that people *cannot* talk like that about you. Clean your teeth *the way virtually every dentist you have ever gone to does*—*WITH POWDER*. See what happens.

Get a can of *Dr. Lyon's Tooth Powder* at any drug store—tomorrow. Brush your teeth with it and then look in your mirror * * * the vast majority who do this never go back to other ways of tooth cleansing. (Commission's Exhibit 27-B.)

PAR. 6. The Commission finds that these advertisements imply that respondent's tooth powder is substantially similar in composition and effectiveness to the powder used by dentists in cleaning their patients' teeth. Not only is this the implication of the language used in the advertisements, but the implication is given added emphasis by the form and arrangement of certain of the advertisements. Illustrative of this is the prominence given by respondent in its streetcar cards and newspaper and magazine advertisements to the slogan "Do as your dentist does—use powder," and the use in connection with this slogan of a picturization of a can of respondent's powder with the name "Dr. Lyon's Tooth Powder" prominently displayed thereon.

PAR. 7. This interpretation of the advertisements finds support also in the testimony of certain members of the purchasing public introduced as witnesses at the instance of the Commission. These witnesses, 13 in number, were clubwomen and housewives living in or near Washington, D. C. Some 7 of the witnesses testified that to them respondent's advertising, and particularly the slogan "Do as your dentist does—use powder," implied that the powder used by dentists in cleaning their patients' teeth is substantially the same as Dr. Lyon's Tooth Powder, and some of this group testified further that they would understand from the advertising that the powder used by dentists is Dr. Lyon's Tooth Powder. The other 6 witnesses testified that they would not understand from the advertising that the powder used by dentists is Dr. Lyon's Tooth Powder or that it is substantially similar thereto.

It is insisted by respondent that these consumer witnesses did not represent an accurate cross section of the entire purchasing public and that their testimony, therefore, cannot be accepted as indicative of the impression gathered from respondent's advertising by the public generally. In support of this contention respondent introduced as expert witnesses 4 professors of advertising and marketing in certain prominent universities in the Eastern and Middle Western sections of the United States. These expert witnesses testified, in substance, that in their opinion the consumer witnesses were not truly representative of the general public, that the witnesses did not constitute an adequate cross section of the purchasing public throughout the country. The Commission of the opinion, however, that irrespective of whether the witnesses represented an accurate cross section of the entire purchasing public, their testimony does indicate that to a substantial portion of the public respondent's advertisements imply that its product is substantially similar to the powder used by dentists.

PAR. 8. The evidence indicates that while the practice is by no means universal, probably the majority of dentists do use powder in cleaning their patients' teeth. The powder used, however, is almost invariably pumice or silex, both of which are highly abrasive and could not safely be used by the public as a dentifrice. The regular use of such highly abrasive substances would result in serious damage to the teeth. The active ingredient of respondent's powder, on the other hand, is calcium carbonate, commonly known as chalk, which is much less abrasive than pumice or silex and much less effective than these substances for cleaning the teeth. It is only in isolated and exceptional instances that dentists use calcium carbonate, and even in those cases the calcium carbonate is used some-

what as a supplement to pumice or silex, being used for the finishing or polishing of the teeth after the heavier work of cleaning has been completed. Respondent's product, therefore, is not comparable with the powder used by dentists, either as to composition or effectiveness.

PAR. 9. Respondent has also represented that its tooth powder is an effective antacid and will correct "acid mouth," this representation being made through the use in its advertisements of the statement, "Even as a neutralizer in acid mouth conditions, Dr. Lyon's is an effective antacid" (Commission's Exhibits 5, 7, 8, 9, 10, 13, 14, 15, and 16). Respondent's product is, in fact, wholly without therapeutic properties. It is not an effective antacid and is incapable of correcting any acid condition which might be present in the mouth.

PAR. 10. Another statement used frequently by respondent in its advertisement is, "Free from all * * * grit * * *, it (the powder) cannot possibly injure or scratch the tooth enamel * * *" (Commission's Exhibits 7, 8, 9, and 10). Tests made by the National Bureau of Standards and by other experts disclosed that samples of respondent's powder were capable of scratching glass, and it was the opinion of these experts, based on such tests, that the powder would also scratch tooth enamel. Further examination of samples of the powder disclosed that some of them contained quartz particles, which may properly be characterized as grit.

It is insisted by respondent that the presence of this grit in the samples tested was accidental, that while grit may be found in one sample of the powder it may be entirely absent from a number of other samples. It is further pointed out by respondent that siliceous material is commonly found in chalk in its natural form and sometimes is not removed in the precipitation of chemical calcium carbonate, that the United States Pharmacopoeia allows a tolerance for the presence of siliceous material in calcium carbonate.

Assuming the correctness of respondent's contentions, it nevertheless seems clear that respondent's powder, occasionally at least, contains particles of quartz or grit, and that there is a possibility of such particles scratching the tooth enamel. The Commission therefore finds that respondent's representations that its powder is "free from all grit" and "cannot possibly injure or scratch the tooth enamel" are exaggerations and misleading.

PAR. 11. The Commission therefore finds that the representations made by respondent with respect to its product, as set forth herein, are misleading and deceptive and constitute false advertisements.

PAR. 12. The Commission further finds that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into

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the erroneous and mistaken belief that respondent's product possesses properties and qualities which it does not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken belief so engendered. In consequence thereof substantial trade has been diverted unfairly to the respondent from its competitors, among whom are those who do not misrepresent their products.

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 in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, original and supplemental reports of the trial examiner upon the evidence and the exceptions to such reports, 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, The R. L. Watkins Co., 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 product designated "Dr. Lyon's Tooth Powder," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement

(a) contains the statement "Do As Your Dentist Does—Use Powder," or any other statement of similar import; or which advertisement otherwise represents, directly or by implication, that re-

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spondent's product is similar to or comparable with the powder used by dentists.

(b) represents, directly or by implication, that respondent's product is an effective antacid or that it will correct "acid mouth."

(c) represents, directly or by implication, that respondent's product is free from all grit or that it cannot injure or scratch the tooth enamel.

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 representation prohibited in paragraph 1 hereof.

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

IN THE MATTER OF
MEMORIAL GRANITE 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 4214. Complaint, Aug. 2, 1940—Decision, Sept. 28, 1942

Where a corporation, engaged in the manufacture of tombstones and monuments, and in the competitive interstate sale and distribution thereof—

- (a) Represented that the prices at which it offered its said products constituted a saving of from 20 to 50 percent from its competitors' prices for similar products, and that quoted prices included the cost of erection, through such typical statements in newspapers of general circulation and other advertising material as "BIG SALE—Save 20% to 50%—400 Monuments to choose from. * * * Delivered anywhere in New England"; and "No extra cost for trucking and erecting";

The facts being its prices did not constitute such a saving, and did not include cost of erection, but included only such monuments and their setting upon a foundation provided and paid for by the purchaser; and

- (b) Misrepresented the size and appearance of its places of business, in its advertising in various circulars, through displaying, in some instances, composite depictions of its factory and two offices which in fact were several miles apart but, as depicted, appeared to be one place of business; and in other instances, a composite picture consisting of two photographs which represented its factory as twice as large as was the fact;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of thereby inducing its purchase of said products; whereby trade was diverted unfairly to it from competitors, including many who do not in any manner misrepresent the prices at which their products are sold or matters pertaining thereto:

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.

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

Mr. B. G. Wilson for the Commission.

Mr. John D. Smith, of Quincy, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Memorial Granite 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, Memorial Granite Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business at 159 Hancock Street, Quincy, Mass. The respondent is now, and for more than 2 years last past has been, engaged in the manufacture of tombstones and monuments 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 tombstones and monuments in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, the respondent is in substantial competition with other corporations, and with partnerships, firms, and individuals engaged in the manufacture, sale, and distribution of tombstones and monuments in said commerce.

PAR. 3. To induce the purchase of its said tombstones and monuments, the respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to its said products. Such statements and representations are inserted in newspapers having a general circulation and in pamphlets, circulars, and other advertising material distributed among prospective purchasers. Among and typical of the false and misleading statements and representations, so made and disseminated as aforesaid, are the following:

Quincy

Barre, Vt.

Westerly, R. I. Imported Red Granite.

BIG SALE—SAVE 30% to 50%.

400 monuments to choose from.

Price includes lettering delivered anywhere in New England.

PAR. 4. Through the use of the foregoing statements and representations, together with other statements and representations similar thereto not set out herein, the respondent represents in its advertisements that its monuments and tombstones were produced or quarried in the Barre, Vt., district, the Westerly, R. I., district, or manufactured from imported Red Granite; that the price at which the respondent offers its tombstones and monuments for sale saves 30

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to 50 percent more to the purchasers thereof than tombstones and monuments made of the same material and sold by its competitors; that respondent's indicated price includes such items or expenses as the cost of lettering, delivery and erection of said products; that said tombstones and monuments are polished on all sides, including the front, back, top, sides, and base; and that its place of business is of the size pictured in said advertisements.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the respondent's said tombstones and monuments are not produced or quarried in the Barre, Vt., district, the Westerly, R. I., district, or manufactured from imported Red Granite, but manufactured from Rygate, Vt., granite which is a cheaper grade. The price at which the respondent offers its tombstones and monuments for sale, does not save 30 to 50 percent more to the purchasers of said products than tombstones and monuments made of the same material and sold by respondent's competitors. In fact, said products are not offered for sale for less than the customary and usual price at which said products are sold. Respondent's indicated price as set forth in its advertisements does not include such items or expenses as the cost of lettering, delivery, and erection of said products. The respondent does not finish or polish its tombstones and monuments on all sides before delivery to the purchasers, as represented, and at the indicated price, but additional charges are required from the purchasers thereof. The pictorial representation of respondent's place of business is a composite of two different views of the plant, formed by combining two or more pictures in such a manner as to give or convey a false and untrue impression to purchasers with respect to the size of the business conducted by the said respondent.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for tombstones and monuments produced or quarried in the Barre, Vt., district, the Westerly, R. I., district, or manufactured from imported Red Granite, over the tombstones and monuments manufactured from a cheap or poor grade of granite.

PAR. 7. There are among the competitors of the respondent, as mentioned in paragraph 2 hereof, many who manufacture, sell, and distribute like products who do not in any manner misrepresent the grade or material of which their products are manufactured, the price at which their said products are offered for sale, or matters pertaining thereto.

PAR. 8. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now

has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and, because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products. As a result thereof, substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States, and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 2, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Memorial Granite Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint (respondent not having filed brief or requested oral argument); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Memorial Granite Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal

place of business at 159 Hancock Street, Quincy, Mass. Respondent is now, and for several years last past has been, engaged in the manufacture of tombstones and monuments and in the sale and distribution thereof in commerce between and among the various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said tombstones and monuments in commerce between and among the various States of the United States.

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, sale, and distribution of tombstones and monuments in said commerce.

PAR. 3. To induce the purchase of its said tombstones and monuments, the respondent has disseminated false and misleading statements and representations with respect to its said products. Such statements and representations are inserted in newspapers having a general circulation, and in pamphlets, circulars, and other advertising material distributed among prospective purchasers.

Among and typical of the false and misleading statements and representations so made and disseminated as aforesaid, are the following:

Quincy Barre, Vt. Westerly, R. I. Imported Red Granite

BIG SALE—Save 20% to 50%

400 Monuments to choose from.

Price includes lettering. Delivered anywhere in New England.

Our trucks deliver and erect all monuments at no additional cost anywhere in New England.

No extra cost for trucking and erecting.

PAR. 4. Through the use of the foregoing statements and representations, together with other statements and representations similar thereto not specifically set out herein, respondent represents that the price at which respondent offers its tombstones and monuments for sale constitutes a saving of from 30 to 50 percent from the price which purchasers would have to pay in purchasing tombstones and monuments made of the same material sold by its competitors and that respondent's quoted prices include cost of erection of said products.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. The prices at which respondent offers its tombstones and monuments for sale do not constitute a saving of from 30 to 50 percent from prices charged by its competitors for tombstones and monuments of like quality and design. The prices quoted by the respondent for its various tombstones and monuments do not include the cost of erection but include only the furnishing

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and setting of such monuments upon a foundation, which foundation is to be provided and paid for by the purchaser.

PAR. 6. In addition to the above statements and representations made by the respondent, the respondent also places upon its various circulars which it distributes among purchasers and prospective purchasers pictorial representations of its places of business. In some instances the pictorial representations constitute a composite picture of respondent's factory and two offices maintained by the respondent, all of which are several miles distant from each other but in the pictorial representation as placed on respondent's circular appear to be one place of business located at one address. In other instances the respondent places upon its circulars a composite picture consisting of two photographs of respondent's factory, which, when joined in one picture, represent that respondent's factory is twice as large as is actually the fact.

PAR. 7. There are, among competitors of respondent, many who manufacture, sell, and distribute like products who do not in any manner misrepresent the prices at which their said products are offered for sale, or matters pertaining thereto.

PAR. 8. The use by the respondent of the false and misleading statements and representations hereinabove described, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and, because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products, and, as a result, trade has been unfairly diverted to the respondent from its competitors who are likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of, and in opposition to,

the allegations of the complaint, taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and brief filed by counsel for the Commission; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Memorial Granite Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of tombstones and monuments 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 products are offered for sale at savings of 30 to 50 percent or at any other savings in excess of the actual savings from prices charged by other manufacturers or dealers for products of like quality and design.

2. Representing, directly or by implication, that the cost of erection is included in the price of a monument or tombstone when the purchaser is required to provide for and pay the cost of the foundation for such tombstone or monument.

3. The use of pictorial representations or composite pictures, in advertising or in any other manner, which inaccurately portray or misrepresent the size or appearance of respondent's place of business.

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

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IN THE MATTER OF
SHERMAN HAT COMPANY

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

Docket 4628. Complaint, Nov. 10, 1941—Decision, Sept. 28, 1942

Where a corporation engaged in the manufacture and interstate sale and distribution of women's hats, and in purchasing in the course of its said business old, worn, and previously used hats, which it blocked to desired shapes and fitted with new trimmings so that they had the appearance of new hats made from felt or other materials which had never been worn or used—
Sold such hats to retailers, jobbers, and wholesalers with no markings or labels to indicate that they had been made from old, worn, and previously used hat bodies;

With result of causing a substantial portion of the purchasing public to believe that its products were manufactured entirely from new materials, thereby causing its purchase of such hats; and of placing in the hands of uninformed or unscrupulous dealers means whereby said dealers might deceive or mislead members of purchasing public into the mistaken belief that they were purchasing new hats:

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

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

Mr. L. E. Creel, Jr., for the Commission.

Mr. Martin W. Bell, 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 Sherman Hat 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, Sherman Hat Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 159 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, and wholesale dealers located

in the various States of the United States. Respondent causes said hats, when sold, to be transported from its 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 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 its business, respondent buys second-hand, old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned, 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, have the appearance of new hats manufactured from felt and other materials which have never been worn or used. When articles which are in fact manufactured from second-hand or used materials but which have the appearance of being manufactured from new materials are offered to the purchasing public and such articles are not clearly and conspicuously labeled as being manufactured from used or second-hand materials, they are easily and readily taken by the members of the purchasing public as having been manufactured entirely from new materials.

PAR. 5. Respondent's failure to mark or label its products in such a manner as will disclose the fact that its products are made from used materials causes and has caused a substantial portion of the purchasing public to believe that its products are manufactured entirely from new materials, and acting upon this erroneous impression, many members of the purchasing public have purchased substantial quantities of respondent's products.

PAR. 6. Through the use of the aforesaid acts and practices, respondent has placed in the hands of uninformed or unscrupulous 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 entirely from new and unused materials.

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 10, 1941, issued and

subsequently served its complaint in this proceeding upon the respondent, Sherman Hat Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. 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 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, 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, Sherman Hat Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 159 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 and of selling same to retailers, jobbers, and wholesale dealers located in the various States of the United States. Respondent causes said hats, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States. 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.

PAR. 3. In the course and conduct of its business, respondent buys hat bodies which have been made from secondhand, old, worn, and previously used hats. These bodies are blocked by the respondent to the desired shapes, fitted with new trimmings, and sold by respondent to dealers, who in turn sell said hats to the purchasing public. These hats, when so sold by the respondent, bear no mark-

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ings or labels to indicate that said hats have been made from old, worn, and previously used hat bodies.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats, have the appearance of new hats manufactured from felt and other materials which have never been worn or used. When articles which are in fact manufactured from secondhand or used materials, but which have the appearance of being manufactured from new materials, are offered to the purchasing public, and such articles are not clearly and conspicuously labeled as being manufactured from used or secondhand materials, they are easily and readily taken by members of the purchasing public as having been manufactured entirely from new materials.

PAR. 5. Respondent's failure to mark or label its products in such manner as will disclose the fact that its products are made from used materials, causes, and has caused, a substantial portion of the purchasing public to believe that its products are manufactured entirely from new materials, and acting upon this erroneous impression many members of the purchasing public have purchased substantial quantities of respondent's products.

PAR. 6. Through the use of the aforesaid acts and practices, respondent has placed in the hands of uninformed or unscrupulous 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 entirely from new and unused materials.

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 in support of, and in opposition to, the allegations of the complaint, taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and brief filed by counsel for the Commission; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

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It is ordered, That the respondent, Sherman Hat 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 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 secondhand 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 secondhand or used materials: *Provided,* That if substantial bands placed similarly to sweat bands in men's hats are attached to said hats, then 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 unserviceable.

2. Representing in any manner that hats made in whole or in part from old, used, or secondhand materials are new or are composed of new materials.

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

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
**BEN D. FOGEL AND LOUIS SINGER, TRADING AS B. & L.
 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 4679. Complaint, Jan. 23, 1942—Decision, Sept. 28, 1942

Where two individuals, engaged in the manufacture of women's hats from felt and other materials obtained from old, worn, and previously used hats, which, after being cleaned, shaped, and fitted with new trimmings, had the appearance of new hats made entirely from new materials; and in interstate sale and distribution of said products—

Sold such hats, with no labeling, marking, or designation stamped thereon or attached thereto to indicate that they were in fact made from previously used materials, to dealers by whom they were resold to the purchasing public without disclosure of aforesaid fact, and through said failure to disclose their true nature, represented that the hats were new hats manufactured entirely from new materials;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, thereby causing it to purchase substantial quantities of said hats, and to place in the hands of dealers a means to mislead and deceive the purchasing public:

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

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

Mr. L. E. Creel, Jr., for the Commission.

Malkin, Glick & Malkin, of Chicago, Ill., for Louis Singer.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ben D. Fogel and Louis Singer, individually, and trading as B. & L. Hat Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Ben D. Fogel and Louis Singer, are individuals, trading as B. & L. Hat Co., and have their principal office and place of business at 612 West Lake Street, 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

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felt and other materials obtained from old, worn, and previously used hats, and of selling the same to retailers, jobbers, or wholesale dealers in the various States of the United States. 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 the 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, respondents buy 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 respondents 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 hereinbefore described, have the appearance of new hats manufactured from felt and other materials which have never been worn or used. When articles manufactured from old, worn, and previously used materials having 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 old, worn, and previously used 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 are old, worn, and previously 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 respondents' hats are purchased by members of the public.

PAR. 5. Through the use of the aforesaid acts and practices, the respondents place 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, worn, and previously used hat bodies.

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 January 23, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Ben D. Fogel and Louis Singer, individually, and trading as B. & L. Hat Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer (which admitted the principal allegations of the complaint), testimony and other evidence in further support of the allegations of the complaint were introduced by the attorney for the Commission before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondents), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (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. During the period beginning December 1, 1939, and ending June 27, 1941, the respondents, Ben D. Fogel and Louis Singer, were copartners, operating under the name of B. & L. Hat Co., with their principal office and place of business at 612 West Lake Street, Chicago, Ill. On June 27, 1941, the copartnership was dissolved, and thereafter respondent, Louis Singer, continued to operate the business individually, retaining the trade name B. & L. Hat Co. Respondent, Ben D. Fogel, entered upon a similar line of business at 226 South Wabash Avenue, Chicago, Ill., using a different trade name.

PAR. 2. During the period of their copartnership, the respondents were engaged in the business of manufacturing women's hats from

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felt and other materials obtained from old, worn, and previously used hats, and of selling their products to retailers and other dealers. Respondents caused their hats, 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. Respondents maintained a course of trade in their hats in commerce among and between various States of the United States.

PAR. 3: In the operation of their business respondents, upon acquiring the old, worn, and previously used felt hats referred to above, cleaned and shaped the hat bodies thus obtained, fitted them with new trimmings, and then sold the finished product to dealers, who in turn sold the hats to the purchasing public. Respondents' hats had the appearance of new hats manufactured entirely from felt and other materials which had never been worn or used, and for a time the hats were sold by respondents to dealers without any label, marking, or designation stamped thereon or attached thereto to indicate that the hats had in fact been manufactured from previously used materials. In reselling the hats to the public, the dealers likewise failed to disclose that the hats were used or second-hand hats rather than new hats. In view of the appearance of the hats, respondents' failure to disclose their true nature constituted a representation that the hats were new hats manufactured entirely from new materials.

PAR. 4. The acts and practices of the respondents had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' hats were new hats manufactured entirely from new and unused materials, and to cause such portion of the public to purchase substantial quantities of respondents' product as a result of the erroneous and mistaken belief so engendered. Respondents' acts and practices served also to place in the hands of dealers a means or instrumentality whereby such dealers might be enabled to mislead and deceive members of the purchasing public.

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 re-

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spondents (which admitted the principal allegations of the complaint), testimony and other evidence in further support of the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by 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 respondent, Ben D. Fogel and Louis Singer, individually, and trading as B. & L. Hat Co., or trading under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution 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 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 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 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
CHICAGO TECHNICAL COLLEGE

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

Docket 4089. Complaint, Apr. 13, 1940—Decision, Oct. 12, 1942

Where a corporation, engaged, in addition to conduct of day and evening classes, in competitive interstate sale and distribution of correspondence courses in drafting, building, air-conditioning and refrigeration; in soliciting sale thereof through advertisements in newspapers, periodicals of general circulation and radio broadcasts—sending to those replying thereto various forms, contracts and advertising material, and in some instances calling upon prospective purchasers through its agents—

(a) Represented that the employment and consultation services which it offered to its students and graduates were free, and that its home study courses were available to a limited number of students only;

The facts being that the cost of its featured employment and consultation service through which it aided students completing its courses in securing employment, was included in the amount paid for the course and was therefore not "free"; and the only limit on the number of its students was the number which could be induced to enroll;

(b) Represented that it was a "recognized" or "accredited" school, implying thereby that credits for work done in its courses were transferable to other schools;

The facts being that while it had received recognition from the Illinois Superintendent of Public Instruction, the Chicago Board of Education, and the Illinois State Examining Board for Teachers Certificates, such recognition did not mean that other institutions had agreed to or would give transferring students credit for work done at its said school; and few, if any, colleges would accept credits for home study courses given by other institutions;

(c) Represented that individuals completing its home study courses were thereby insured of employment, promotion, and success;

The facts being that such results were necessarily dependent upon many factors beyond its control;

(d) Falsely represented that individuals completing its home study training in drafting would thereby be qualified to do expert drafting work and for the top-ranking positions in drafting; and that its home study training in air-conditioning and refrigeration would qualify students for top-ranking positions in those fields;

The facts being said courses would not thus qualify the typical or average individual for the top-ranking or more difficult and intricate work in the fields in question;

With tendency and capacity to mislead prospective purchasers into the mistaken belief that such representations were true, thereby inducing them to purchase and pursue such courses; whereby trade was unfairly diverted to said corporation from competitors, to the injury of competition in commerce:

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

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

Mr. R. A. McOuat and *Mr. William L. Pencke* for the Commission.
Mr. Harry M. Ehrlich, 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 Chicago Technical College, 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, Chicago Technical College, 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 118 East Twenty-sixth Street, in the city of Chicago, State of Illinois.

PAR. 2. Said respondent is now and has been engaged in the sale and distribution in commerce of home-study courses in drafting, in air-conditioning and refrigeration, and in building; with said courses of study and instruction being pursued by correspondence through the medium of the United States mail. It causes said courses, together with books and material connected therewith, when sold, to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Said respondent is now, and during all the times mentioned herein has been, in substantial competition with other corporations, and with firms, partnerships and individuals also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of similar home-study courses in drafting, in air-conditioning and refrigeration, and in building, which are likewise pursued by correspondence through the medium of the United States mail.

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PAR. 4. Said respondent, in soliciting the sale of and in selling its said courses of study and instruction, and in the distribution thereof in commerce, has made numerous misleading statements and representations by one or more of the following methods, to wit: through its representatives engaged in soliciting the sale of such courses; in advertising matter caused by respondent to be published in newspapers and magazines circulated among the general public, including prospective students, in various States of the United States; in printed matter circulated by respondent by mail or otherwise to prospective students, enrolled students, and others in various States of the United States; in radio broadcasts to members of the public generally. Among and typical of such misleading statements and representations made by or through one or more of the said methods are the following:

1. That, "Only through Chicago Tech. can you obtain 'college training at home.' The swift, sure way to succeed in drafting."
2. That, "My correspondence course from Chicago Tech. has equipped me for my work as well as a similar four-year university course would have done."
3. That, "This certificate is issued to _____ and will be accepted by the Chicago Technical College as payment in full for the complete course, 'Inside Facts on Drafting', provided that this certificate is accompanied by this enrollment for the college home-study courses in drafting."
4. That, "This certificate is issued to _____ and will be accepted by the Chicago Technical College as payment in full for the complete course, 'Inside Facts on the Business of Building', provided that this certificate is accompanied by his enrollment for the college home-study builder's course."
5. That, "Now given to you free of extra cost * * * 'The Inside Facts of Drafting' * * * Learning the facts about how to sell your services quickly * * * 'Inside Facts of Drafting' shows you how, yet it doesn't cost you one penny extra if you just decide to use the enclosed certificate at once and act today. This amazing offer is yours today."
6. That the employment and consultation services which it offers to its students and graduates are free.
7. That its home-study courses are available to only a limited number of students.
8. That Chicago Technical College is an accredited school.
9. That Chicago Technical College is the leading school for builders.
10. That the tuition charges for its various home-study courses will in the future be increased.
11. That individuals completing its home-study courses in building are thereby insured of employment, of promotions and of success.
12. That its home-study course in drafting is recognized by employers of draftsmen generally.
13. That individuals using the Chicago Technical College plan of home-study training in drafting and those completing such training will thereby be qualified as experienced draftsmen, will be qualified to do expert drafting work and will be qualified for the top-ranking positions in drafting.

14. That the Chicago Technical College home-study courses in drafting and in air conditioning and refrigeration cost less than half that of other well-known courses in the same subjects.

15. That Chicago Technical College home-study training in air conditioning and refrigeration will qualify one for the top-ranking positions in the air conditioning and refrigeration field.

16. That the demand for draftsmen far exceeds the supply.

17. That positions open and available in the air conditioning and refrigeration field are plentiful and that properly trained applicants may have their choice of such positions.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the Chicago Technical College is not the only way to obtain college training at home or is it a swift, sure way to succeed in drafting and a correspondence course from the Chicago Technical College is not equivalent to a 4-year university course. The certificate referred to will not be accepted by respondent as full payment for a course in drafting or in building, nor will "The Inside Facts of Drafting" be furnished free and without cost to those presenting such certificates. Employment and consultation services are not furnished free to its students by respondent, nor are the home-study courses advertised available only to a limited number of students but they are sold generally to all applicants. The Chicago Technical College is not an accredited school, nor is it the leading school for builders, nor is it recognized as such by employers of draftsmen generally. Individuals completing respondent's home-study courses in building are not insured or assured of employment, promotions, or success, nor are they able to secure top-ranking positions in the air-conditioning and refrigeration industry. The demand for employees in this field is not far in excess of the supply but, on the contrary, the field is crowded and many well-trained applicants are available for positions that are not open. The cost of respondent's home-study courses is not less than one-half the cost of other well-known courses in the same subjects.

PAR. 6. The foregoing acts and practices used by respondent in connection with the offering for sale and distribution of its said courses of study and instruction, as hereinbefore set out, have had, and now have, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations, as herein alleged, are true, and to induce them to purchase and pursue such courses of study and instruction on account thereof. Thereby trade is unfairly diverted to respondent from competitors engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of correspondence courses in drafting, in air conditioning and refrigeration, and in building, as well as from those engaged in

such sale of correspondence courses in subjects pertaining to various trades, callings, and pursuits and in preparation for work and positions of various kinds. There are among the competitors of respondent those who, in the sale of their respective courses of study and instruction, do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set out, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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 13, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Chicago Technical College, 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 the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and briefs in support of and in opposition to the complaint (oral argument not having been requested): and to the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of 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 Technical College, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2000 South Michigan Boulevard, Chicago, Ill.

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Respondent was organized in 1904 as an evening school and in 1906 day classes were added. In 1911 home study or correspondence courses were added and have been continued since that time. Respondent has gradually increased its enrollment until it now has, in addition to those students taking correspondence courses, some 1,400 to 1,500 students attending classes conducted at respondent's place of business in Chicago.

PAR. 2. In the course and conduct of the aforesaid business respondent is now, and has been, engaged in the sale and distribution of correspondence courses in drafting, building, and air conditioning and refrigeration. It causes said courses, together with books and material connected therewith, when sold, to be transported from its place of business in Chicago, Ill., to the purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and has maintained, a course of trade in said courses of study and instruction in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In carrying on its said business respondent has been, and is, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution, in commerce between and among the various States of the United States and in the District of Columbia, of correspondence courses in drafting, building, and air conditioning and refrigeration.

PAR. 4. Respondent's method of soliciting the sale of its said home study courses is to place advertisements in newspapers, magazines, and other periodicals having general circulation throughout the United States and to cause such advertisements to be broadcast by radio. When inquiries are received in response to such advertisements, various forms, contracts, and advertising material are sent to prospective purchasers, and in some instances agents and representatives of respondent call upon such prospective purchasers and endeavor to complete the sale of respondent's correspondence courses.

In the solicitation of the sale of its said home study or correspondence courses of instruction respondent, through the advertising matter caused to be published and circulated as aforesaid, through radio broadcasts, through its agents and representatives, and in the forms, contracts, and advertising material sent to prospective students and others, has made various statements and representations, including the following:

That the employment and consultation services which it offers to its students and graduates are free;

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That its home study courses are available to only a limited number of students;

* * *

That respondent is an accredited school;

* * *

That individuals completing its home study courses in building are thereby insured of employment, of promotions, and of success;

* * *

That individuals using respondent's plan of home study training in drafting, and those completing such training, will thereby be qualified as experienced draftsmen, will be qualified to do expert drafting work, and will be qualified for the top-ranking positions in drafting;

* * *

That respondent's home study training in air-conditioning and refrigeration will qualify those completing such training for the top-ranking positions in the air-conditioning and refrigeration field.

PAR. 5. Respondent maintains an employment and consultation service through which it aids numerous of the students completing its courses of study in securing employment. This assistance is featured and emphasized by respondent in its advertising and promotional material as an inducement to prospective students to enroll in its courses. This assistance, however, is obviously not "free," as represented by respondent, since the cost thereof is included in the amount paid by a student for the course taken.

The representation by respondent that its home study courses are available to only a limited number of students is not supported by the facts. There is no limitation placed by respondent upon the number of students which it will enroll in home study courses. Such courses are offered generally and the only limit to the number of home study students is the number which can be induced to enroll.

Respondent represents that it is a "recognized" or "accredited" school. To many students or prospective students these terms signify or mean that credits earned for work done are transferable to and accepted and recognized by other schools, thus permitting the transfer of a student from respondent's school to another without the necessity of examination or loss of time through the refusal of a school to recognize the work done by a transferring student in respondent's school. In the case of colleges and other higher institutions such transfers of credits are facilitated through agreements by such institutions, which are members of various voluntary associations. Respondent is not a member of any such association. It has received from the Superintendent of Public Instruction of the State of Illinois "official recognition as a special school of technology," and the Board of Education of the city of Chicago recognizes work done at respondent's school "for promotional credit for the teachers of the Chicago public schools," and it is authorized by the Illinois State Examining Board for Teach-

ers Certificates to say that "It is recognized by the State Superintendent of Public Instruction and the State Examining Board for Teachers Certificates of Illinois as a fully recognized special school of technology." The recognition thus accorded respondent does not, however, mean that other institutions have agreed to or will give transferring students credit for work done at respondent's school. This fact is emphasized in a letter from the Board of Education of the city of Chicago to respondent which states in part:

Of course, the fact that we accredit the school does not mean that we can in any way guarantee that the work will be recognized as college credit by the various universities. This determination must be left to the individual colleges and universities themselves.

Although respondent will accept in its resident school credits earned by students in its home study or correspondence courses, few, if any, colleges will accept credits for home study courses given by any other institution. In the absence of any qualification or explanation, the representation by respondent that it is a recognized or accredited school has the capacity and tendency to mislead students and prospective students as to the transferability of credits earned for work done in respondent's courses.

It is not a fact that individuals completing respondent's home study courses are thereby insured of employment, of promotions, and of success. Employment, promotions, and success are necessarily dependent upon many factors which are not within the control of respondent. Neither is it a fact that individuals completing respondent's home study courses in drafting are thereby qualified as experienced or expert draftsmen, or to do expert drafting work, or qualified for the top-ranking or more intricate and difficult drafting work.

The home study course in air-conditioning and refrigeration sold by respondent will not qualify the typical or average individual completing such course for the top-ranking or more difficult and intricate work in the air-conditioning and refrigeration field.

PAR. 6. The foregoing statements and representations made by respondent in connection with the offering for sale, sale, and distribution of its courses of study and instruction have had, and have, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce them to purchase and pursue such courses of study and instruction. Thereby trade is unfairly diverted to respondent from competitors engaged in the sale and distribution in commerce of correspondence courses in drafting, air-conditioning and refrigeration, and building. As a result of respondents' said practices substantial injury has been done, and is now

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being done, by respondent to competition in commerce between and among various States of the United States.

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 taken before an examiner of the Commission theretofore duly designated by it, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Chicago Technical College, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of correspondence courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by inference:

1. That any service or commodity, the cost of which is included in the purchase price of any other service or commodity, is "free," either by the use of the term stated or any other term or terms of similar import or meaning.
2. That respondent's correspondence courses are offered to only a limited number of persons, or that the number of persons who will be enrolled for such courses is limited.
3. That respondent is a recognized or accredited school, without disclosing in immediate connection therewith, in a clear and conspicuous manner, the nature and extent of such recognition or accreditation, and the application thereof to its correspondence courses.
4. That upon completion of its correspondence courses individuals are insured or otherwise made certain of employment, promotion, or success.
5. That upon completion of respondent's correspondence course in drafting individuals will be qualified thereby as experienced or expert

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draftsmen, or qualified for top-ranking drafting positions handling the more intricate or difficult drafting work.

6. That upon completion of respondent's correspondence course in air-conditioning and refrigeration individuals will be qualified thereby for top-ranking positions in air-conditioning and refrigeration handling the more intricate and difficult air-conditioning or refrigeration work.

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.

Syllabus

IN THE MATTER OF

ZENITH RADIO CORPORATION

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

Docket 4174. Complaint, July 6, 1940—Decision, Oct. 12, 1942

Where a corporation, engaged in manufacturing and assembling radio receiving sets, radio tubes and similar products, and in interstate sale and distribution thereof; by means of advertisements in newspapers and magazines, folders and circulars, and also through radio broadcasts—

- (a) Represented, directly or by implication, that its radio sets were capable of bringing in programs broadcast from Europe, South America, and the Orient every day, and that such programs would be reasonably audible and distinct at all times and under all conditions, through such typical statements as "EUROPE IS TALKING TO YOU Every Night IN ENGLISH—ARE YOU LISTENING? With Zenith, the short-wave radio that gives you 'Europe, Direct' you can hear all the leaders * * * all the daily news broadcasts * * * Europe, South America, or the Orient every day guaranteed or your money back on all short-wave Zeniths";

The facts being that there are times when, due to atmospheric conditions, electrical disturbances, and other obstacles which the industry has so far been unable to overcome, satisfactory reception of foreign broadcasts is impossible and neither its or any other sets are capable of providing such reception at all times or under all conditions;

- (b) Represented, directly or by implication, through such typical statements as "6-Tube Superheterodyne Table Model," "8-Tube Superheterodyne With Wavemagnet Aerial," etc., that sets advertised by it as containing 6 or 8 tubes contained said number of necessary and fully functioning tubes for the detection, amplification, and reception of radio signals;

The facts being that one of such devices in certain sets was not a tube but merely a tuning indicator, and one or more of the others were rectifier tubes which, while serving the auxiliary function of changing alternating into direct current, do not perform the primary function of detecting, amplifying, or receiving radio signals, and a substantial portion of the purchasing public does not distinguish between tubes which perform such primary functions and rectifier tubes and tuning indicator devices which perform only auxiliary functions, but believes that the greater the number of tubes, the greater will be the set's power;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said radio receiving sets possessed capacities which they did not in fact possess, thereby causing its purchase of such sets:

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

As respects the extent of the public understanding of the limitations on foreign short-wave radio reception—in connection with advertiser-seller's direct or implied representations that its sets were capable of bringing in programs

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broadcast from Europe, South America, and the Orient every day, and that such programs would be reasonably audible and distinct at all times and under all conditions, and the advertiser-seller's insistence that the purchasing public is fully acquainted with the fact that there are times when atmospheric conditions, electrical disturbances, and other obstacles prevent satisfactory reception of foreign broadcasts—the public, while it may be to a limited extent aware of some of the difficulties encountered in radio reception, does not possess sufficient information to enable it properly to evaluate representations in question, which were couched in such language as to lead it to believe that advertiser-seller had succeeded in overcoming the conditions which would interfere with satisfactory reception.

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

Mr. Carrel F. Rhodes and *Mr. Edward L. Smith* for the Commission.

Montgomery, Hart, Pritchard & Herriot, 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 Zenith Radio 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, Zenith Radio 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 at 6001 West Dickens Street, Chicago, Ill.

Respondent is now and has been for more than 10 years last past engaged in the business of manufacturing and assembling radio receiving sets, radio tubes, and like products, and in selling and distributing said products to dealers for resale direct to the purchasing public. Said respondent corporation sells and distributes said products to dealers for resale and to buyers among the purchasing public throughout the United States and in the District of Columbia. Said respondent now causes and for more than 10 years last past has caused its said products when sold either to dealers for resale or direct to the purchasing public to be transported from its principal place of business in Chicago, Ill., to the purchasers thereof at their several points of location in the State of Illinois and in the various States of the United States other than the State of Illinois and in the District of Columbia.

There is now, and has been at all times mentioned herein, a course of trade in said products so sold and distributed by said respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of the business set out and described in paragraph 1 hereof, for the purpose of inducing the purchase of the radio receiving sets, radio tubes, and like products offered for sale and sold by it, the respondent has circulated, and has caused dealers in its products to circulate, among prospective purchasers throughout the United States, by mail, advertisements in newspapers and magazines, by means of advertising folders, pamphlets, circulars, letters, and other literature, and by broadcasts from radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, many statements and representations concerning its said radio receiving sets. In many of said programs so broadcast and in the advertising literature so disseminated, said respondent has made, and has caused dealers to make, false and misleading statements and representations in describing said radio receiving sets and their power and capacity for reception, and the number of active functioning tubes in said radio sets. Among said statements and representations so made and circulated by respondent and its dealers, under its direction, are the following:

London, Paris, Berlin, Moscow, Rome now broadcast in English!

Zenith Short-Wave Radios are guaranteed to bring in Europe, South America, or the Orient every day or your money back! * * *

Long distance radios with short-wave are guaranteed to bring in Europe or your money back. Way back in 1923 Zenith was pioneering in short-wave radio to make possible today's superlative performance * * *.

Positively the greatest 1940 Zenith values ever offered * * * ten-tube superheterodyne * * * eleven-tube superheterodyne * * * radio console with eight tubes * * * the amazing new 1940 eight-tube, three band Radiorgan Zenith long distance radio * * * six tubes! Push buttons! Long and short-wave * * * six-tube heterodyne with wave magnet aerial, two-button Radiogram.

The aforesaid statements and representations, together with similar statements and representations not herein set out, purport to be descriptive of said respondent's Zenith Short-Wave radio receiving sets; the number of necessary functioning tubes with which they are equipped and the power and capacity for foreign reception of said radio receiving sets, and serve as representations on the part of the respondents to members of the purchasing public and to dealers that said radio receiving sets are equipped, some with 6, some with 8, some with 10, and some with 11, active, fully functioning tubes; and that said radio receiving sets have the power and capacity to and will bring in programs broadcast from stations located in Europe,

South America, and the Orient every day and that they are guaranteed to and will bring in broadcasts from London, Paris, Berlin, Moscow, Rome, and points in South America and the Orient in sufficient volume, free from static, so as to be distinctly heard at all times and under all conditions.

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.

PAR. 3. In truth and in fact respondent Zenith Radio Corporation's aforesaid Zenith radio receiving sets are not equipped with 6, 8, 10 or 11, active, necessary, fully functioning tubes, respectively, but have installed therein 1 or 2, or more ballast nonfunctioning, or tuning beacon tubes, or rectifier tubes. Such ballast or tuning beacon tubes, or rectifier tubes, devices and accessories do not serve as amplifying, detecting, or oscillating tubes and do not perform any recognized and customary function of a radio receiving tube in the detection, amplification, and reception of radio signals and said Zenith radio sets equipped with such radio tubes will not bring in broadcasts from London, Paris, Berlin, Moscow, Rome, and other points in Europe and from South America and the Orient in sufficient volume; free from static, to be distinctly heard at all times and under all conditions.

PAR. 4. Each and all of the foregoing false and misleading statements and representations made by the respondent as aforesaid, in describing said Zenith radio receiving sets and their power and capacity for foreign reception and the number of tubes contained therein, 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 portion of the purchasing public into the erroneous and mistaken belief that such representations are true. As a result of this erroneous and mistaken belief a substantial number of the purchasing public have purchased a substantial volume of respondent's said 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 July 6, 1940, issued and subse-

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quently served its complaint in this proceeding upon the respondent, Zenith Radio Corporation, 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 the attorneys for the Commission, and in opposition thereto by the attorneys for the respondent, before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, and testimony and other evidence (the report of the trial examiners and briefs and oral argument having been waived); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Zenith Radio 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 at 6001 West Dickens Street, Chicago, Ill. Respondent is now and for a number of years last past has been engaged in the business of manufacturing and assembling radio receiving sets, radio tubes and similar products, and in the sale and distribution of such products to dealers for resale to the purchasing public.

PAR. 2. Respondent causes and has caused 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 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 and for the purpose of inducing the purchase of its products by the public, respondent has circulated and has caused its dealers to circulate numerous advertisements among prospective purchasers, such advertisements being disseminated by means of newspapers and magazines, and also in advertising folders and circulars distributed to the public. Use has also been made by respondent of radio broadcasts in its advertising campaigns. Among and typical of certain of the statements appearing in respondent's advertisements are the following:

EUROPE IS TALKING TO YOU Every Night in ENGLISH ARE YOU LISTENING?

With Zenith, the short wave radio that gives you "Europe, direct" you can hear all the leaders * * * all the daily news broadcasts. You need not depend on rebroadcasts which bring you only a small part.

Europe, South America or the Orient every day guaranteed or your money back on all short wave Zeniths.

1940 ZENITH, The Guaranteed Short Wave RADIO (Com. Exs. 8, 33).

PAR. 4. Through the use of these statements and others of a similar nature, respondent has represented, directly or by implication, that its radio receiving sets are capable of bringing in programs broadcast from stations located in Europe, South America, and the Orient, every day, and that such programs will be reasonably audible and distinct at all times and under all conditions.

In fact, neither respondent's receiving sets nor any other radio receiving sets are capable of providing satisfactory reception of programs broadcast from foreign radio stations every day, or at all times or under all conditions. From time to time there exist various atmospheric conditions, electrical disturbances, and other obstacles to satisfactory radio reception which the radio industry has so far been unable to overcome. There are times when, due to these or other conditions, satisfactory reception of foreign broadcasts is impossible.

It is insisted by respondent that the purchasing public is fully acquainted with these facts and that the advertisements therefore are not misleading. The Commission is of the opinion, however, that while the public is to a limited extent aware of some of the difficulties encountered in radio reception, it does not possess sufficient information to enable it properly to evaluate respondent's representations. Respondent's advertisements are couched in such language as to lead the public to believe that respondent has succeeded in overcoming the various conditions which otherwise would interfere with satisfactory reception.

PAR. 5. Respondent has also made frequent reference in its advertising to the number of tubes contained in its various receiving sets. Typical of these statements are the following:

6-Tube Superheterodyne Table Model (Com. Ex. 3).

8-Tube Superheterodyne With Wavemagnet Aerial (Com. Ex. 3).

Ten-tube superheterodyne with Rotor Wavemagnet Aerial (Com. Ex. 2, 3, 4).

Eleven-tube superheterodyne with Rotor Wavemagnet Aerial (Com. Ex. 4).

PAR. 6. These statements imply that the tubes contained in the respective receiving sets referred to are active, necessary, and fully functioning tubes, and are for the purpose of performing the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

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One of the devices in certain of respondent's receiving sets thus referred to as a tube is not in fact a tube but is merely a tuning indicator device or "Magic Eye." Also, one or more of the other devices thus referred to as tubes are "rectifier" tubes which, while serving the auxiliary function of changing alternating electric current into direct current, do not perform the primary function of detecting, amplifying, or receiving radio signals.

A substantial portion of the purchasing public does not distinguish between radio tubes which perform the primary functions of detecting, amplifying, and receiving radio signals, and rectifier tubes and tuning indicator devices which perform only auxiliary functions and do not increase the power of the receiving set to detect or receive radio signals. Such portion of the public believes that the greater the number of tubes in a receiving set, the greater will be its power of detecting, amplifying, and receiving signals.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to its receiving sets; as set forth herein, are erroneous and misleading.

PAR. 8. The Commission further finds that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's radio receiving sets possess capacities, qualities, and characteristics which they do not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's receiving sets as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it (the report of the trial examiners and briefs and oral argument having been waived), and the Commission having made its findings as to the facts and its con-

EUROPE IS TALKING TO YOU Every Night in ENGLISH ARE YOU LISTENING?

With Zenith, the short wave radio that gives you "Europe, direct" you can hear all the leaders * * * all the daily news broadcasts. You need not depend on rebroadcasts which bring you only a small part.

Europe, South America or the Orient every day guaranteed or your money back on all short wave Zeniths.

1940 ZENITH, The Guaranteed Short Wave RADIO (Com. Exs. 8, 33).

PAR. 4. Through the use of these statements and others of a similar nature, respondent has represented, directly or by implication, that its radio receiving sets are capable of bringing in programs broadcast from stations located in Europe, South America, and the Orient, every day, and that such programs will be reasonably audible and distinct at all times and under all conditions.

In fact, neither respondent's receiving sets nor any other radio receiving sets are capable of providing satisfactory reception of programs broadcast from foreign radio stations every day, or at all times or under all conditions. From time to time there exist various atmospheric conditions, electrical disturbances, and other obstacles to satisfactory radio reception which the radio industry has so far been unable to overcome. There are times when, due to these or other conditions, satisfactory reception of foreign broadcasts is impossible.

It is insisted by respondent that the purchasing public is fully acquainted with these facts and that the advertisements therefore are not misleading. The Commission is of the opinion, however, that while the public is to a limited extent aware of some of the difficulties encountered in radio reception, it does not possess sufficient information to enable it properly to evaluate respondent's representations. Respondent's advertisements are couched in such language as to lead the public to believe that respondent has succeeded in overcoming the various conditions which otherwise would interfere with satisfactory reception.

PAR. 5. Respondent has also made frequent reference in its advertising to the number of tubes contained in its various receiving sets. Typical of these statements are the following:

6-Tube Superheterodyne Table Model (Com. Ex. 3).

8-Tube Superheterodyne With Wavemagnet Aerial (Com. Ex. 3).

Ten-tube superheterodyne with Rotor Wavemagnet Aerial (Com. Ex. 2, 3, 4).

Eleven-tube superheterodyne with Rotor Wavemagnet Aerial (Com. Ex. 4).

PAR. 6. These statements imply that the tubes contained in the respective receiving sets referred to are active, necessary, and fully functioning tubes, and are for the purpose of performing the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

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One of the devices in certain of respondent's receiving sets thus referred to as a tube is not in fact a tube but is merely a tuning indicator device or "Magic Eye." Also, one or more of the other devices thus referred to as tubes are "rectifier" tubes which, while serving the auxiliary function of changing alternating electric current into direct current, do not perform the primary function of detecting, amplifying, or receiving radio signals.

A substantial portion of the purchasing public does not distinguish between radio tubes which perform the primary functions of detecting, amplifying, and receiving radio signals, and rectifier tubes and tuning indicator devices which perform only auxiliary functions and do not increase the power of the receiving set to detect or receive radio signals. Such portion of the public believes that the greater the number of tubes in a receiving set, the greater will be its power of detecting, amplifying, and receiving signals.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to its receiving sets; as set forth herein, are erroneous and misleading.

PAR. 8. The Commission further finds that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's radio receiving sets possess capacities, qualities, and characteristics which they do not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's receiving sets as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it (the report of the trial examiners and briefs and oral argument having been waived), and the Commission having made its findings as to the facts and its con-

clusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Zenith Radio 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 radio receiving sets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any of respondent's radio receiving sets will bring in broadcasts from any foreign radio station "every day," or otherwise representing, directly or by implication, that such receiving sets are capable of providing reasonably audible and distinct reception of foreign broadcasts at all times or under all conditions.

2. Representing, directly or by implication, that any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

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

E. B. MOLES, DOING BUSINESS AS MALONE & MOLES

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

Docket 4557. Complaint, Aug. 6, 1941—Decision, Oct. 12, 1942

Where an individual, engaged in interstate sale and distribution of a mechanical automobile device designated by him as "Gas-Miser"; by means of advertisements in newspapers and periodicals and other advertising literature, directly and by implication—

- (a) Represented that his device would supercharge an automobile engine, was a gas and oil saver which increased the mileage, power, speed, and pep of automobiles, saved upkeep and provided easier and quicker starting;
- (b) Represented that the device reduced the thinning-out process in the cylinder oil, eliminated cylinder wash, lengthened the life of the engine, and provided a smoother-running car; and
- (c) Represented that it solved motoring problems, eliminated carbon, distributed gas vapors evenly to all cylinders, and eliminated waste;

The facts being it was incapable of supercharging an automobile engine, or lengthening the life thereof; did not possess the merits and qualities claimed therefor; afforded no solution of motoring problems; and said various representations were false, erroneous, and misleading;

With tendency and capacity of misleading a substantial portion of the purchasing public into the mistaken belief that said device possessed qualities and values which it did not, thereby inducing 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.

As respects evidence offered in support of vendor-advertiser's representations that his device "Gas-Miser" would supercharge an automobile engine and constituted a gas and oil saver which increased mileage, power, etc., which evidence consisted principally of testimony of several members of the public to the effect that they had received beneficial results from use of such device: Said evidence was without substantial probative value where the record contained no definite information with respect to the conditions under which, or the period of time during which, the device was used, and where there was no indication that purported results were checked on other occasions to verify their accuracy; and was insufficient to overcome evidence showing the false and misleading nature of said representations, based on comprehensive tests of the device made by the National Bureau of Standards and the testimony of the expert of the Bureau who supervised them.

Before *Mr. Arthur F. Thomas* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Joseph C. Fehr and *Mr. John W. Carter, Jr.* for the Commission.

Complaint

35 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 E. B. Moles, individually, and trading under the name of Malone & Moles, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, E. B. Moles, is an individual, trading under the name of Malone & Moles, with his office and principal place of business located at 606 Pierce Street, in the city of Sioux City, in the State of Iowa. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a mechanical device for use on automobiles and trucks, designated as "GAS-MISER." Respondent causes said product, when sold, to be shipped from his place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his product, respondent has made many exaggerated, false, deceptive, and misleading statements and representations concerning the value, efficiency, and effect of his device and the results obtained by its use by means of various advertisements inserted in newspapers, periodicals, and other advertising literature distributed and circulated among purchasers and prospective purchasers. Among and typical of the statements and representations contained in these advertisements are the following:

Manufacturers and distributors in United States and Foreign Countries of the SUPER-CHARGING GAS-MISER.

INVENTS GAS SAVER FOR AUTOS.

A new invention called the Supercharging GAS-MISER has been thoroughly tested by Mr. E. B. Moles of 640 Pierce St., Sioux City, Iowa, who reports remarkable savings in gasoline and oil. It is reported the GAS-MISER not only saves up to 25% in gas and oil, but also creates a scientific super-charging action that increases power and pep. This device is fully automatic and is easily installed in any auto or truck in a few minutes. Mr. Moles wants Agents and Distributors and is willing to send a free GAS-MISER sample offer to anyone interested. Write him today.

Leading automotive engineers okay GAS-MISER. It is positively DIFFERENT from anything ever on the market before * * * but it has been exten-

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sively used, tried and proven to give satisfactory results! GAS-MISER guarantees that you must get at least 10% more miles for every gallon of gasoline from your auto * * * no matter how old or how new it may be.

Increases Power.

Saves Gasoline.

Saves upkeep cost.

GAS-MISER will bring savings in gas costs—in smoother running—more pep—easier starting—quicker pickup.

(1) Better power and pep. (2) Reducing of cylinder wash, therefore, reducing of thinning-out process in the cylinder oil. (3) Longer life of engine due to better condition of cylinder oil. (4) Product will pay for itself in gasoline savings before many months.

At Griffith's Garage—the leading repair garage in Sioux City—GAS-MISER was subjected to exhaustive tests just recently. These proved conclusively that GAS-MISER gives greater mileage, more power, more pep and a smoother running car.

GAS-MISER SOLVES MOTORING PROBLEMS.

SMOOTHER PERFORMING MOTOR. THE GAS-MISER eliminates cylinder wash and carbon, two of the most harmful agencies at work in your motor, Gas vapor is at once evenly distributed to all cylinders, with the installation of the Gas-Miser, thus smooth, powerful performance and longer engine life results. Once the Gas-Miser is installed, you will notice the smoother operation of your motor, and will be aware of the extra power and greater speed range of the motor.

GAS-MISER ELIMINATES WASTE! THE MAXIMUM energy or power of gasoline utilized in the average motor car in operation is not more than 8%. Therefore, 92% of this energy is wasted through friction, cooling attachments, and the exhaust. With the installation of the GAS-MISER a substantial part of this waste is eliminated.

PAR. 3. Through the use of the aforesaid statements and representations circulated and distributed as aforesaid, respondent represents and has represented that the device designated "GAS-MISER" will super-charge an automobile engine, is a gas and oil saver, increases the mileage, power, speed, and pep of automobiles, saves upkeep, provides easier starting and quicker pick-up, reduces thinning-out process in the cylinder oil, eliminates cylinder wash, lengthens the life of the engine, provides a smoother running car, solves motoring problems, eliminates carbon, distributes gas vapors evenly to all cylinders, and eliminates waste, and other and similar representations.

PAR. 4. The aforesaid representations, as well as others of similar import or meaning which have not been specifically set out herein, are exaggerated, false, misleading, and deceptive. In truth and in fact, respondent's device, designated "GAS-MISER," will not super-charge an automobile engine. Said device is not a gas and oil saver, nor does it increase the mileage, power, speed, and pep of automobiles. It does not save upkeep, nor does it provide easier starting and quicker pick-up. Respondent's said device will not reduce thinning-out proc-

ess in the cylinder oil, nor does it eliminate cylinder wash, nor lengthen the life of the engine, or provide a smoother running car. It does not eliminate carbon, eliminate waste, nor distribute gas vapors evenly to all cylinders, and the representation that respondent's said device solves motoring problems is grossly exaggerated. It does not and cannot fulfill any of the claims made for it in said advertisements.

PAR. 5. The use by respondent of the exaggerated false, misleading, and deceptive statements and representations as hereinabove set forth, has had and now has the capacity and tendency to, and does induce a substantial number of the purchasing public to purchase respondent's said "GAS-MISER" in the erroneous belief that the representations made by respondent are true.

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 August 6, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, E. B. Moles, individually, and trading under the name of Maloney & Moles, charging him 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 the attorney for the Commission, and in opposition thereto by the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (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. For some 2 years immediately preceding June 13, 1940, the respondent, E. B. Moles, was engaged in the sale and distri-

bution of a mechanical device for use on automobile engines, the device being designated by him as "Gas-Miser." Respondent had his office and principal place of business at 606 Pierce Street, Sioux City, Iowa, and for a time did business under the trade name Malone & Moles. All of respondent's business operations were discontinued shortly after June 13, 1940.

PAR. 2. During the period of his business operations respondent caused his device, when sold, to be transported from his place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintained a course of trade in his device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his product, respondent advertised his product by means of advertisements inserted in newspapers and periodicals, and by means of other advertising literature distributed among prospective purchasers. Among and typical of the statements and representations appearing in these advertisements were the following:

Manufacturers and distributors in United States and Foreign Countries of the SUPER-CHARGING GAS-MISER.

INVENTS GAS SAVER FOR AUTOS.

A new invention called the Supercharging GAS-MISER has been thoroughly tested by Mr. E. B. Moles of 640 Pierce St., Sioux City, Iowa, who reports remarkable saving in gasoline and oil.

It is reported the GAS-MISER not only saves up to 25% in gas and oil, but also creates a scientific super-charging action that increases power and pep. This device is fully automatic and is easily installed in any auto or truck in a few minutes. Mr. Moles wants Agents and Distributors and is willing to send a free GAS-MISER sample offer to anyone interested. Write him today!

Leading automotive engineers okay GAS-MISER. It is positively DIFFERENT from anything ever on the market before * * * but it has been extensively used, tried and proven to give satisfactory results! GAS-MISER guarantees that you must get at least 10% more miles for every gallon of gasoline from your auto * * * no matter how old or how new it may be.

Increases Power.

Saves Gasoline.

Saves upkeep cost.

GAS-MISER will bring savings in gas costs—in smoother running—more pep—easier starting—quicker pickup.

(1) Better power and pep. (2) Reducing of cylinder wash, therefore, reducing of thinning-out process in the cylinder oil. (3) Longer life of engine due to better condition of cylinder oil. (4) Product will pay for itself in gasoline savings before many months.

At Griffith's Garage—the leading repair garage in Sioux City—GAS-MISER was subjected to exhaustive tests just recently. These proved conclusively that

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GAS-MISER gives greater mileage, more power, more pep and a smoother running car.

GAS-MISER SOLVES MOTORING PROBLEMS.

SMOOTHER PERFORMING MOTOR. THE GAS-MISER eliminates cylinder wash and carbon, two of the most harmful agencies at work in your motor. Gas vapor is at once evenly distributed to all cylinders with the installation of the Gas-Miser, thus smooth, powerful performance and longer engine life results. Once the Gas-Miser is installed, you will notice the smoother operation of your motor, and will be aware of the extra power and greater speed range of the motor.

GAS-MISER ELIMINATES WASTE! THE MAXIMUM energy or power of gasoline utilized in the average motor car in operation is not more than 8%. Therefore, 92% of this energy is wasted through friction, cooling attachments, and the exhaust. With the installation of the GAS-MISER, a substantial part of this waste is eliminated.

PAR. 4. Through the use of these statements and others of a similar nature, respondent represented, directly or by implication, that his device would supercharge an automobile engine, was a gas and oil saver, increased the mileage, power, speed, and pep of automobiles, saved upkeep, provided easier starting and quicker pickup, reduced the thinning-out process in the cylinder oil, eliminated cylinder wash, lengthened the life of the engine, provided a smoother running car, solved motoring problems, eliminated carbon, distributed gas vapors evenly to all cylinders, and eliminated waste.

PAR. 5. At the instance of the Commission, comprehensive tests of respondent's device were made by the National Bureau of Standards. The report of the Bureau describing these tests in detail and setting forth the conclusions reached by the Bureau is in evidence, and the Bureau's expert who supervised the tests also testified in person during the hearings. On the basis of this evidence, the Commission finds that the device did not possess the merits and qualities claimed by respondent. It was incapable of supercharging an automobile engine and its use resulted in no saving of gasoline or oil. It did not increase the mileage, power, speed, or pep of automobiles. It did not save upkeep, nor provide easier starting, or quicker pickup. The device did not reduce the thinning-out process in the cylinder oil nor did it eliminate cylinder wash. It was incapable of lengthening the life of the engine, nor did its use result in a smoother running car. It did not eliminate carbon or waste, nor did it distribute gas vapors evenly to the cylinders. It afforded no solution of motoring problems.

The evidence offered by respondent consisted principally of the testimony of several members of the public to the effect that they had used respondent's device on their automobiles and had received beneficial results from such use. The record, however, contains no definite information with respect to the conditions under which the

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device was used or the period of time during which it was used, nor is there any indication that the purported results were checked on other occasions to verify their accuracy. At best the evidence is of an uncertain and unscientific nature. The Commission is of the opinion that it is without substantial probative value and that it is insufficient to overcome the evidence introduced at the instance of the Commission.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to his device, as set forth above, were erroneous and misleading.

PAR. 7. The Commission further finds that the use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's device possessed qualities and values which it did not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's device as a result of the erroneous and mistaken belief 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 in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, 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, E. B. Moles, individually, and trading under the name Malone & Moles, 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 in commerce, as "commerce" is defined

in the Federal Trade Commission Act, of respondent's mechanical device designated "Gas-Miser," or any other device of substantially similar construction, whether sold under the same name or under any other name, do forthwith cease and desist from representing:

1. That said device will supercharge an automobile engine, or increase the power, speed, or pep of an automobile.
2. That said device increases mileage, saves upkeep, or saves gasoline or oil.
3. That said device provides easier starting or quicker pickup.
4. That said device reduces the thinning-out process in the cylinder oil, or eliminates cylinder wash.
5. That said device lengthens the life of an automobile engine, or provides a smoother running car.
6. That said device eliminates carbon or waste.
7. That said device distributes gas vapors evenly to all cylinders of an automobile engine.
8. That said device solves motoring problems.

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

GRAND RAPIDS FACTORY SHOW ROOMS, INC., MORRIS
ZISBLATT, MEYER ZISBLATT, SAM ZISBLATT, AND
LILLIAN ZISBLATT.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4626. Complaint, Nov. 6, 1941—Decision, Oct. 12, 1942*

Where a corporation and the two individuals directing its management, policies and operations; engaged in the interstate sale and distribution of household furniture—

- (a) Represented that their furniture was made in Grand Rapids, Mich, important center of the furniture industry, through display of their corporate name "Grand Rapids Factory Show Rooms, Inc." upon signs on the building in which their business was located, upon their business cards and those of their salesmen, and upon their stationery and invoice forms, and through statements and words to such effect by their officers, agents, and salesmen to prospective purchasers; and
- (b) Represented that their corporation owned, operated, or controlled a factory at Grand Rapids, and that their furniture was sold direct from the factory to the consumer at wholesale prices, without addition of the middleman's profit, through words "Factory Show Rooms" in its aforesaid corporate name displayed as above set forth; and also through display of words "Direct from Factory to You," and through oral statements by its officers, agents, and salesmen that its sales were made direct from the factory to the consumer and consequently at better prices than retail dealers could give, and that its prices were wholesale prices;

The facts being that only a small portion of their furniture was made in Grand Rapids, Mich., furniture of which is in widespread demand as possessing dependable qualities and other desirable characteristics; it did not own, operate, or control a furniture factory in said city or elsewhere; its sales were not made direct from the factory, but were resales at retail of furniture purchased from factories or wholesalers; said place of business was not a factory show room but a retail store; and prices charged by it were higher than the usual current wholesale prices;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public—which prefers, for reasons above indicated, to purchase household furniture made in said city, and also to buy direct from the factory as securing advantages not ordinarily obtained through retail channels, and considers that there are advantages in buying from a concern with a large volume of business indicated by "Factory Show Rooms"—into the mistaken belief said representations were true; and with effect of causing such public, because of such belief, to purchase substantial quantities of furniture from aforesaid corporation:

Complaint

35 F. T. C.

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 P. Bramhall*, trial examiner.

Mr. J. R. Phillips, Jr. and *Mr. James M. Hammond* for the Commission.

Mr. Louis Libert, 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 Grand Rapids Factory Show Rooms, Inc., a corporation, and Morris Zisblatt, Meyer Zisblatt, Sam Zisblatt, and Lillian Zisblatt, 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, Grand Rapids Factory Show Rooms, Inc., hereinafter referred to as respondent corporation, is a corporation, organized under the laws of the State of New Jersey, with its office and place of business at 165 Ward Street, city of Paterson, State of New Jersey, and the respondents Morris Zisblatt, Meyer Zisblatt, Sam Zisblatt, and Lillian Zisblatt are the incorporators, officers, directors, and executive employees of respondent corporation, and direct its management, policies, and operations. Said individual respondents have acted in concert and in cooperation each with the other, and with said corporate respondent, in doing the acts and things hereinafter alleged.

PAR. 2. Under the control and direction of said individual respondents, respondent corporation is now, and has been for more than 1 year last past, engaged in the business of selling and distributing household furniture. Said respondent sells said furniture to purchasers situated in various States of the United States, and in the District of Columbia, and causes said furniture, when sold, to be transported from the aforesaid place of business in the State of New Jersey to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondent corporation maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said household furniture among and between various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of said business, and for the purpose of inducing the purchase of the said household furniture, respondent corporation displays, and for more than 1 year last past has displayed, upon signs on the building in which its business is located, upon its business cards, and the business cards of its salesmen, and upon its stationery and invoice forms used in said business, its corporate name Grand Rapids Factory Show Rooms, Inc., and also the words "Grand Rapids Factory Show Rooms" and "Direct From Factory To You."

Said respondent, through oral statements made by its officers, agents, and salesmen, also represents, and has represented to prospective purchasers that said furniture is manufactured in Grand Rapids, Mich.; that its sales are made directly from the factory to the consumer, and consequently at better prices than retail dealers could give; and that its prices are wholesale prices.

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

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent corporation has represented that the furniture sold by it is manufactured in Grand Rapids, Mich.; that the respondent owns, operates, or controls a factory at Grand Rapids; and that said furniture is sold direct from the factory to the consumer, without the addition of the middleman's profit; that the prices at which it is sold are wholesale prices.

PAR. 6. The aforesaid representations made by respondent corporation are false and misleading. In truth and in fact, only a small portion of the furniture sold by said respondent is made in Grand Rapids, Mich. Said respondent does not own, operate, or control a furniture factory in Grand Rapids, Mich., or elsewhere. Its sales are not made "direct from factory" as that phrase is generally used in the trade and understood by the public, but are in fact resales, at retail, of furniture purchased by respondent from factories or from wholesalers. Said respondent's place of business is not a factory show room, but a retail store. The prices which it charges for its wares are higher than the usual, current, wholesale prices for such wares.

PAR. 7. By reason of the widespread reputation, popularity, and good will enjoyed by furniture made in Grand Rapids, Mich., throughout the United States, there is a substantial portion of the purchasing public which prefers to purchase household furniture manufactured in the city of Grand Rapids, which prefer to purchase direct from the factory, believing that in so doing it secures better prices, superior quality, and other advantages not ordinarily obtainable when such furniture is purchased through ordinary retail channels; and which believes that there are advantages in purchasing furniture from a concern having the large volume of business indicated by "factory show rooms."

PAR. 8. Respondent corporation's acts and practices, as hereinabove alleged, 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 furniture purchased from said respondent is made in Grand Rapids, Mich., sold direct from the factory owned, operated, or controlled by it, at wholesale prices, and that the corporate respondent is maintaining and operating show rooms for the purpose of displaying furniture having its origin in Grand Rapids, Mich., and to cause, and do cause, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of furniture from the respondent corporation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 6th day of November 1941, issued its complaint in this proceeding against Grand Rapids Factory Show Rooms, Inc., a corporation, and Morris Zisblatt, Meyer Zisblatt, Sam Zisblatt, and Lillian Zisblatt, individuals, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act.

On August 21, 1942, the respondents Grand Rapids Factory Show Rooms, Inc., Meyer Zisblatt, and Sam Zisblatt filed their answer, in which answer the said respondents admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. The present whereabouts of the individual respondents, Morris Zisblatt and Lil-

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lian Zisblatt, are unknown to the Commission, and service of the complaint upon these respondents was not perfected. The proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto of Grand Rapids Factory Show Rooms, Inc., Meyer Zisblatt, and Sam Zisblatt; and the Commission, having fully considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts, and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Grand Rapids Factory Show Rooms, Inc., hereinafter referred to as respondent corporation, is a corporation, organized under the laws of the State of New Jersey which heretofore had its office and place of business at 165 Ward Street in the city of Paterson, State of New Jersey, and the respondents, Meyer Zisblatt and Sam Zisblatt, are the incorporators, officers, directors, and executive employees of respondent corporation, and direct its management, policies, and operations. Further, respondents, Grand Rapids Factory Show Rooms, Inc., Meyer Zisblatt, and Sam Zisblatt, state in their answer that Grand Rapids Factory Show Rooms, Inc., discontinued its furniture business about the middle of June 1940, and that neither it nor any of the individual respondents have resumed actual participation in the furniture business since that date. The individual respondents, Meyer Zisblatt and Sam Zisblatt, have acted in concert and in cooperation each with the other and with said corporate respondent in doing the acts and things hereinafter alleged.

PAR. 2. Under the control and direction of said individual respondents, respondent corporation was prior to June 1940, engaged in the business of selling and distributing household furniture. Said respondent sold said furniture to purchasers situated in various States of the United States and in the District of Columbia and caused said furniture, when sold, to be transported from its aforesaid place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent corporation maintained prior to June 1940, a course of trade in said household furniture in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business and for the purpose of inducing the purchase of the said household furniture, respondent corporation for more than 1 year prior to June 1940, displayed upon signs on the building in which its business was located, upon its busi-

ness cards and the business cards of its salesmen, and upon the stationery and invoice forms used in said business, its corporate name, Grand Rapids Factory Show Rooms, Inc., and also the words "Grand Rapids Factory Show Rooms" and "Direct from factory to you."

Said respondent corporation through oral statements made by its officers, agents, and salesmen also has represented to prospective purchasers that said furniture was manufactured in Grand Rapids, Mich.; that its sales were made direct from the factory to the consumer, and consequently at better prices than retail dealers could give; and that its prices were wholesale prices.

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

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent corporation has represented that the furniture sold by it was manufactured in Grand Rapids, Mich.; that it owned, operated, or controlled a factory at Grand Rapids; that said furniture was sold direct from the factory to the consumer, without the addition of the middleman's profit; and that the prices at which the furniture was sold were wholesale prices.

PAR. 6. The aforesaid representations made by respondent corporation were false and misleading. In truth and in fact, only a small portion of the furniture sold by such respondent was made in Grand Rapids, Mich. Said respondent did not own, operate, or control a furniture factory in Grand Rapids, Mich., or elsewhere. Its sales were not made "direct from factory" as the phrase is generally used in the trade and understood by the public, but were in fact sales at retail of furniture purchased by such respondent from factories or from wholesalers. Said respondent's place of business was not a factory show room but a retail store. The prices which it charged for its wares were higher than the usual, current, wholesale prices for such wares.

PAR. 7. By reason of the widespread reputation, popularity, and goodwill enjoyed by furniture made in Grand Rapids, Mich., throughout the United States, there was and now is a substantial portion of the purchasing public which prefers to purchase household furniture manufactured in the city of Grand Rapids; which prefers to purchase direct from the factory, believing that in so doing it secures better

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prices, superior quality, and other advantages not ordinarily obtainable when such furniture is purchased through ordinary retail channels; and which believed and still believes that there are advantages in purchasing furniture from a concern having the large volume of business indicated by "factory show rooms."

PAR. 8. The respondents' acts and practices as hereinabove found have had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that furniture purchased from said respondents was made in Grand Rapids, Mich., sold direct from a factory owned, operated, or controlled by respondents, at wholesale prices, and that the corporate respondent was maintaining and operating show rooms for the purpose of displaying furniture having its origin in Grand Rapids, Mich.; and to cause, and have caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of furniture from the respondent corporation.

CONCLUSION

The acts and practices of the respondent corporation and the individual respondents, Meyer Zisblatt and Sam Zisblatt, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, Grand Rapids Factory Show Rooms, Inc., Meyer Zisblatt and Sam Zisblatt (service of the complaint not having been obtained upon the other respondents), in which answer said respondents admit all the material allegations of fact set forth in said complaint, except as to the continuation in business after June 1940, of the respondent, Grand Rapids Factory Show Rooms, Inc., and state that they waive all intervening procedure and further hearing on 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 said respondents, Grand Rapids Factory Show Rooms, Inc., a corporation, and its officers, and Meyer Zisblatt and Sam Zisblatt, individually, and as officers, of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering

for sale, sale and distribution of furniture in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Grand Rapids," or any simulation thereof, as a part of respondents' corporate or trade name, or otherwise representing, directly or by implication, that the furniture sold by respondents is obtained principally from Grand Rapids, Mich.

2. Using the words "Grand Rapids," or any simulation thereof, to designate, describe, or refer to furniture which is not in fact manufactured in Grand Rapids, Mich.

3. Misrepresenting in any manner the place of origin or manufacture of respondents' furniture.

4. Using the term "Factory Show Rooms," or any other term of similar import, as a part of respondents' corporate or trade name or otherwise representing that respondents' place of business is a factory show room.

5. Using the phrase "Direct from factory to you," or any other phrase of similar import, to designate, describe or refer to the character of respondents' business, or otherwise representing that respondents' own or operate a factory or that respondents' furniture is sold direct from the factory to the consumer, or that the prices at which respondents sell their furniture are wholesale prices.

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, closed as to respondents, Morris Zisblatt and Lillian Zisblatt without prejudice to the right of the Commission, should the facts so warrant, to reopen the proceeding and resume trial thereof in accordance with its regular procedure.

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 4728. Complaint, Mar. 12, 1942—Decision, Oct. 12, 1942

Where a corporation, engaged in interstate sale and distribution, by mail order, of various cosmetic preparations, among other things, directly and by implication, through advertisements disseminated by it in various ways—

- (a) Represented that just as vitamins internally consumed help make a healthy body, so vitamins A and D externally applied help make the skin healthy and beautiful; and
- (b) Represented that its said preparations, because of the addition of vitamins A and D would therapeutically treat or benefit the skin, and were more effective in keeping the complexion clear and smooth, helped retard the appearance of age, and would relieve skin dryness and promote beautiful, glowing skin; and that its hand preparations, because of the addition of vitamin D would aid in keeping the hands soft, smooth, and white;

The facts being that external application of vitamins will not therapeutically affect the skin as will internal consumption thereof affect the health, and ordinary application thereof by means of cold cream would have no therapeutic value; while vitamins may be absorbed to some extent through the skin under certain conditions, the effect would be systemic and not restricted to the site of the application; said creams contained so little of said vitamins that even if the entire vitamin content were carried into the blood stream, it would not affect the appearance of the skin beyond having an emollient, smoothing, and cleansing action; and its said products, either with or without the addition of vitamins, were of no value in excess of their properties as ordinary cosmetic cream preparations; and

(c) Falsely implied, through use of words "Tissue Cream" in name of preparation, or by reference thereto, that such product had therapeutic value in treating and nourishing the tissues of the skin beyond the ordinary value of a lubricant;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that said representations were true, thereby inducing purchase thereof:

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

Mr. William L. Pencke for the Commission.

Mr. Brooks Wynne, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the Federal 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 corpo-

ration, 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:

PARAGRAP^H 1. Respondent, Montgomery Ward & Co., Inc., is a corporation, organized, existing and doing business under the laws of the State of Illinois, with its principal office and place of business located at 619 West Chicago Avenue in the city of Chicago and State of Illinois.

Respondent is now, and for several years past has been, engaged in the operation of a mail order business. Among the articles sold by the respondent are various cosmetic preparations which have been and are sold and distributed in commerce 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 causes and has caused said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cosmetic products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false and misleading advertisements concerning its said products by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said products; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by means of catalogs and other written or printed advertising matter, are the following:

WARD'S CREAMS CONTAIN VITAMINS "A" AND "D" Super-fine Creams—
doubly rich in vitamins. When made, 1400 U. S. P. Units of Vitamin A and 300
U. S. P. Units D are added to each ounce of cream.

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Double-Vitamin Cold Cream

Rich in Vitamins A and D. Use for cleansing skin of dirt, make-up. Pat into skin morning and evening—will help keep complexion clear and satin smooth. For normal and dry skins.

SKIN SOFTENING CREAM

Formerly called Wards Tissue Cream. Rich in Vitamins A and D. When first signs of age appear—a skin needs massage with a rich Cream like Wards to provide beneficial lubrication.

VITAMINS! VITAMINS! Whose Skin Needs Vitamins? Just as vitamins help make a healthy body, so they help make a beautiful skin. *Vita Ray Vitamin Cream* brings directly to your skin Vitamins A and D. It helps relieve dryness and adds a fresh, glowing tone to your face. Try Vita Ray—an all purpose Cream.

Double Vitamin Cream for Dry Skins

Extra heavy, rich—for skins susceptible to dryness. Double-vitamin skin-softening cream. Rich and softening oils for massaging that "past 30" complexion.

Kleer Skin

An improved formula containing Vitamin D and Olive Oil in addition to Almond Oil and other skin-softening ingredients. Not sticky—easy-to-rub-in vanishing-type cream—helps keep hands smooth, soft, white.

Lady Carole
Vita Facial Pak

1000 units of Vitamin D per ounce. Easy-to-make facial packs for less than 2c each. A powder—just mix with water. Cleansing, stimulating—helps keep skin smooth. * * * 5-oz. Jar, Enough for 20-Facials.

PAR. 4. By the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represents, directly and by implication, that its various cosmetic cream preparations, because of the addition thereto of vitamins, will therapeutically treat or benefit the skin to which they are applied; that, because of the addition of vitamins to said preparations, said preparations are made more effective in keeping the complexion clear and smooth; that in the same manner as vitamins internally consumed help make a healthy body, so vitamins A and D externally applied to the skin help make the skin healthy and beautiful; that said preparations, because of their vitamin A and D content, help keep the facial skin firm and smooth, and help to retard the appearance of age; that said preparations, by reason of their vitamin content, will relieve skin dryness and promote beautiful, glowing skin; and that respondent

ent's hand cream preparations, because of the addition of vitamin D thereto, will aid in keeping the hands soft, smooth and white.

PAR. 5. The foregoing representations and advertisements, used and disseminated by the respondent as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, the respondent's various cosmetic cream preparations will not, because of the addition thereto of vitamins, therapeutically treat or benefit the skin to which said preparations are applied. The addition of vitamins to said preparations will not aid said preparations in keeping the complexion clear and smooth. The external application of vitamins to the skin will not therapeutically affect such skin in the same manner as will the internal consumption of vitamins therapeutically affect the health of the body. In truth and in fact, the skin does not require local applications of vitamins, and although vitamins, to some extent, may be absorbed through the skin if applied thereto in a suitable manner and under certain conditions, the effect of such absorption would be systemic and not local or restricted to the site of the application. The ordinary application, however, of vitamins by means of cold cream applied to the skin would have no therapeutic value. The respondent's preparations, by reason of the addition of vitamins A and D, will not help keep the facial skin firm and smooth and retard the appearance of age. The said preparations will not, by reason of their vitamin content, relieve skin dryness and promote beautiful, glowing skin. The respondent's hand cream preparations will not, as a result of their vitamin D content, aid in keeping hands smooth, soft, and white. Further, respondent's said preparations are of no value either with or without the addition of vitamins A and D, or any other vitamins, in excess of their properties as ordinary, cosmetic cream preparations.

PAR. 6. The use by the respondent of the words "Tissue Cream" as the name or as part of the name, or by reference as part of a former name of a cosmetic cream preparation is misleading in that the words "Tissue Cream" so used implies that said preparation has a therapeutic value in treating or nourishing the tissues of the skin beyond the ordinary value of a lubricant.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, and representations with respect, to its said preparations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representatives are true, and induces a substantial number of the purchasing public, because

of such erroneous and mistaken belief to purchase respondent's said preparations.

PAR. 8. The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 12, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Montgomery Ward & 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 stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondent 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. In said stipulation, respondent expressly waived the filing of a report upon the evidence by a trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Montgomery Ward & Co., Inc., is a corporation, organized, existing, and doing business under the laws of the State of Illinois, with its principal office and place of business located at 619 West Chicago Avenue in the city of Chicago and State of Illinois.

Respondent is now, and for several years past has been, engaged in the operation of a mail-order business. Among the articles sold by the respondent are various cosmetic preparations which have been, and are,

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

PAR. 3. In the course and conduct of its said business, the respondent has disseminated and has caused the dissemination of, false and misleading advertisements concerning certain of its said cosmetic products, by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said products; and respondent has also disseminated, and has caused the dissemination of, false and misleading advertisements concerning its said cosmetic products by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said cosmetic 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 means of catalogs and other written or printed advertising matter, are the following:

WARD'S CREAMS CONTAIN VITAMINS "A" AND "D" Super-fine Creams—doubly rich in vitamins. When made, 1400 U. S. P. Units of Vitamin A and 300 U. S. P. Units of Vitamin D are added to each ounce of cream.

Double-Vitamin Cold Cream

Rich in Vitamins A and D. Use for cleansing skin of dirt, make-up. Pat into skin morning and evening—will help keep complexion clear and satin smooth. For normal and dry skins.

SKIN SOFTENING CREAM

Formerly called Ward's Tissue Cream. Rich in Vitamins A and D. When first signs of age appear—a skin needs massage with a rich Cream like Ward's to provide beneficial lubrication.

VITAMINS! VITAMINS! Whose Skin Needs Vitamins? Just as vitamins help make a healthy body, so they help make a beautiful skin. *Vita Ray Vitamin Cream* brings directly to your skin Vitamins A and D. It helps relieve dryness and adds a fresh, glowing tone to your face. Try *Vita Ray*—an all purpose Cream.

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Double Vitamin Crèam for Dry Skins

Extra heavy, rich—for skins susceptible to dryness. Double-vitamin skin-softening cream. Rich and softening oils for massaging that "past 30" complexion.

Kleer Skin

An improved formula containing Vitamin D and Olive Oil in addition to Almond Oil and other skin-softening ingredients. Not sticky—easy-to-rub-in vanishing-type cream—helps keep hands smooth, soft, white.

Lady Carole

Vita Facial Pak

1000 units of Vitamin D per ounce. Easy-to-make facial packs for less than 2c each. A powder—just mix with water. Cleansing, stimulating—helps keep skin smooth. * * * 5-oz. Jar, Enough for 20 Facials.

PAR. 4. By the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represented, directly and by implication, that its various cosmetic cream preparations, because of the addition thereto of vitamins, would therapeutically treat or benefit the skin to which they were applied; that, because of the additions of vitamins to said preparations, said preparations were made more effective in keeping the complexion clear and smooth; that in the same manner as vitamins internally consumed help make a healthy body, so vitamins A and D externally applied to the skin help make the skin healthy and beautiful; that said preparations, because of their vitamin A and D content, help keep the facial skin firm and smooth, and help to retard the appearance of age; that said preparations, by reason of their vitamin content, would relieve skin dryness and promote beautiful, glowing skin; and that respondent's hand cream preparations, because of the addition of vitamin D thereto, would aid in keeping the hands soft, smooth, and white.

PAR. 5. The foregoing representations and advertisements, used and disseminated by the respondent as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, the respondent's various cosmetic cream preparations will not, because of the addition thereto of vitamins, therapeutically treat or benefit the skin to which said preparations are applied. The addition of vitamins to said preparations will not aid said preparation in keeping the complexion clear and smooth. The external application of vitamins to the skin will not therapeutically affect such skin in the same manner as will the internal consumption of vitamins therapeutically affect the health of the body. In truth and in fact, the skin does not require local applications of vitamins, and although vitamins to some extent may be absorbed through the

skin if applied thereto in a suitable manner and under certain conditions, the effect of such absorption would be systemic and not local or restricted to the site of the application. The ordinary application, however, of vitamins by means of cold cream applied to the skin would have no therapeutic value. The respondent's preparations, by reason of the addition of vitamins A and D, will not help keep the facial skin firm and smooth and retard the appearance of age. The said preparations will not, by reason of their vitamin content, relieve skin dryness and promote beautiful, glowing skin. The respondent's hand cream preparations will not, as a result of their vitamin D content, aid in keeping hands smooth, soft, and white. Further, respondent's said preparations are of no value either with or without the addition of vitamins A and D, or any other vitamins, in excess of their properties as ordinary, cosmetic cream preparations. Its creams contain such small amounts of vitamins A and D that if they are in contact with the skin only a short time no effective absorption by the skin will take place, and even if the entire vitamin A content of the cream applied should be absorbed by the skin and then carried into the blood stream, it would not affect the appearance of the skin beyond having an emollient, smoothing, and cleansing action.

PAR. 6. The use by the respondent of the words "Tissue Cream" as the name or as part of the name, or by reference as part of a former name of a cosmetic cream preparation is misleading in that the words "Tissue Cream" so used imply that said preparation has a therapeutic value in treating or nourishing the tissues of the skin beyond the ordinary value of a lubricant.

PAR. 7. The Commission further finds that the dissemination of the false and misleading advertisements herein above described, was discontinued by the respondent a short time prior to the issuance of the complaint herein.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to these preparations, disseminated as aforesaid, has had the capacity and tendency to, and did, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations were true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken 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

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

ORDER TO CEASE AND DESIST

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 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 conclusions based thereon, and an order disposing of the proceedings; 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, Montgomery Ward & Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of cosmetic preparations, do forthwith cease and desist from:

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 any of respondent's cosmetic preparations containing vitamins A and D have any therapeutic value when applied to the skin or have any effect upon the appearance of the skin beyond the emollient, soothing, and cleansing action of ordinary cosmetic cream preparations.

(b) That the presence of vitamins A and D in respondent's cosmetic preparations gives such preparations special properties over and above those of ordinary cosmetic creams, or that the use of such creams, because of such vitamin content, will have any beneficial effect in keeping the facial skin firm and smooth or the hands soft, smooth, and white, or have any effect in relieving dryness of the skin, promoting glowing skin, or retarding the appearance of age.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondent's cosmetic preparations in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the

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representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

3. The use of the words "Tissue Cream" or any other words of similar import or meaning to designate or describe any cosmetic preparation, or representing through any other means or device, that respondent's cosmetic preparations have therapeutic value in treating or nourishing the tissues of the skin.

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

Complaint

IN THE MATTER OF

L. L. EDWARDS

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

Docket 4797. Complaint, Aug. 6, 1942—Decision, Oct. 12, 1942

Where an individual, engaged in competitive interstate sale and distribution of assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public, a typical assortment consisting of 30 identical 5-cent cartons for sale under a plan by which chance purchasers secured an additional cent enclosed in five of said cartons, the 5-cent piece contained in three, and the 10-cent piece in one—

Sold such assortments to jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with aforesaid sale plan, involving game of chance to procure a prize in addition to the nuts; 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 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 products in preference to those of said competitors; whereby trade was diverted unfairly 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.

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 L. E. 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, L. L. Edwards, is an individual, with his principal office and place of business located at Shelbyville, Tenn. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of nut products and candy to jobbers and retail dealers located in the various States of the United

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States and in the District of Columbia. Respondent causes and has caused his products when sold to be shipped and transported from his aforesaid place of business in the State of Tennessee to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business, respondent is, and has been, in competition with other individuals and with corporations and firms engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 30 small cartons of nuts packed in a display carton being the following legend:

HOW LUCKY PEANUTS

Packed by
L. L. EDWARDS
Shelbyville, Tennessee

YOU MAY FIND
1c 5c 10c

and the nuts are distributed in the following manner:

Said packages of nuts retail at 5 cents each and 5 of said small cartons have concealed in said carton 1 cent; 3 of said small cartons have a 5-cent piece concealed in each of them and one of said small cartons contains 10 cents. All of said cartons are identical and the prospective purchaser is unable to determine until after a purchase has been made whether he will receive a carton containing 1 cent, 5 cents, or 10 cents, or a carton containing nothing but nuts. The fact as to whether the purchaser of said carton of nuts receives the nuts plus 1 cent, 5 cents, or 10 cents is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said package of nuts, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to, and places in the hands of others, the means of con-

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ducting 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.

PAR. 4. The sale of packages of nuts to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure a prize in addition to the nuts. Many persons, firms, and corporations who sell and distribute products 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 which is contrary to public policy. Many persons are attracted by said sales plan or method 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 his competitors who do not use the same or equivalent methods. The use of said method by respondent, because of said game of chance, has 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 his said competitors who do not use the same and 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 August 6, 1942, issued and thereafter served its complaint in this proceeding upon respondent, L. L. Edwards, an individual, 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 August 28, 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, L. L. Edwards, is an individual, with his principal office and place of business located at Shelbyville, Tenn. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of nuts products and candy to jobbers and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused his products when sold to be shipped and transported from his aforesaid place of business in the State of Tennessee to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent, in such food products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business, respondent is, and has been, in competition with other individuals and with corporations and firms engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 30 small cartons of nuts packed in a display carton bearing the following legend:

HOW LUCKY PEANUTS

Packed by
L. L. EDWARDS
Shelbyville, Tennessee

YOU MAY FIND
1¢ 5¢ 10¢

and the nuts are distributed in the following manner:

Said packages of nuts retail at 5 cents each and 5 of said small cartons have concealed in said carton 1 cent; 3 of said small cartons have a 5-cent piece concealed in each of them and one of said small cartons contains 10 cents. All of said cartons are identical and the prospective purchaser is unable to determine until after a purchase

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has been made whether he will receive a carton containing 1 cent, 5 cents, or 10 cents, or a carton containing nothing but nuts. The fact as to whether the purchaser of said carton of nuts receives the nuts plus 1 cent, 5 cents, or 10 cents is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said package of nuts, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of 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.

PAR. 4. The sale of packages of nuts to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure a prize in addition to the nuts. Many persons, firms and corporations who sell and distribute products in competition with respondent as above found, 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 which is contrary to public policy. Many persons are attracted by said sales plan or method 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 his competitors who do not use the same or equivalent methods. The use of said method by respondent, 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 and in the District of Columbia to respondent from his said competitors who do not use the same and 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 upon the complaint of the Commission and the answer of respondent

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ent, 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, L. L. Edwards, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his nuts or nut products, or any other products, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing nuts or nut products, or any other merchandise, so packed and assembled that sales of said merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is sold by respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme;

2. Supplying to or placing in the hands of dealers, or others, assortments of packages of nuts or nut products which are to be used or, due to the manner in which such merchandise is packed and assembled at the time it is sold by respondent may be used to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of such nuts or nut products to the public;

3. Packing or assembling in the same assortment packages of nuts or nut products for ultimate sale to the public which individual packages of nuts or nut products are of uniform appearance but some of which contain coins or other United States money;

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

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

Complaint

IN THE MATTER OF

EDWIN TOM, TRADING AS MASTER 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 4748. Complaint, Apr. 14, 1942—Decision, Oct. 19, 1942

Where an individual, engaged in interstate sale and distribution of Chinese herbs; by means of advertisements through the mails and newspapers, directly or by implication—

Represented that his herbs constituted a cure or remedy and competent and effective treatment for various diseases and ailments, including rheumatism, arthritis, asthma, and stomach ulcers; and that the use of the herbs would renew the glands of the body, thus enabling the user to regain strength and vigor;

The facts being they possessed no therapeutic value in the treatment of said conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis and from the paroxysms of asthma; they had no therapeutic value in the treatment of any other ailments in excess of affording temporary relief from some of the pains or symptoms which might accompany the disorders; and they would not renew the glands or enable the user to regain strength or vigor;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said herbs possessed therapeutic properties which they did not, thereby causing such public to purchase substantial quantities 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.

Mr. James I. Rooney for the Commission.

Mr. Clifford Thoms, 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 Edwin Tom, an individual, trading and doing business as Master Herb 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, Edwin Tom, also known as Shing Tom and Kim Fong Tom, is an individual, trading and doing business as

Master Herb Co., with his principal office and place of business located at 215 West Ninth Street, Los Angeles, Calif.

PAR. 2. Respondent is now and for more than 3 years last past has been engaged in the business of selling and distributing Chinese herbs which are offered for sale and sold as a treatment for diseases and disorders of the human body. Respondent has caused and now causes said herbs, when sold, to be transported from his aforesaid place of business in Los Angeles, Calif., to purchasers thereof located in various States of the United States other than the State of California, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said herbs 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 his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said 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, as hereinbefore set forth, by the United States mails and by advertisements in newspapers, are the following:

GREATHER HEALTH

By renewing your glands.
Regain strength and lost vigor, enjoy living.
Eliminate Rheumatism, Arthritis, Asthma, Stomach Ulcers, and various other ailments.
Use Chinese Herbs for greater relief.
T. Foo Yuen 50 years in Southern California.

MASTER HERB CO.

PAR. 4. Through the use of the statements and representations hereinabove set forth, all of which purport to be descriptive of the remedial, curative, and therapeutic value of respondent's herbs and of the benefits to be derived from their use, respondent represents, directly and by implication, that said herbs, or combinations thereof, constitute a cure or remedy for various diseases and ailments of the human

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body including rheumatism, arthritis, asthma, and stomach ulcers, and constitute a competent and effective treatment for such disorders; that the use of said herbs will renew glands, thus enabling the user to regain strength and lost vigor; that Chinese herbs, such as are sold by respondent, have more therapeutic value and provide greater relief than other medicinal preparations or methods of treatment.

PAR. 5. The foregoing representations and claims used and disseminated by the respondent as hereinabove described, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's herbs are not a cure or remedy for, and do not constitute a competent or effective treatment for, rheumatism, arthritis, asthma, and stomach ulcers, nor do they have any therapeutic value in the treatment of any of such conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis and temporary relief from the paroxysms of asthma. Said herbs are not a cure or remedy for, nor do they constitute a competent and effective treatment of, other diseases and ailments of the human body and have no therapeutic value in the treatment thereof in excess of affording temporary palliative relief from some of the pains or symptoms thereof. The use of said herbs will not renew glands and will not enable the user to regain strength or lost vigor. Chinese herbs do not have more therapeutic value and do not provide a greater measure of relief than other medicinal preparations or methods of treatment.

PAR. 6. The use by said respondent of the foregoing false, 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 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 respondent's preparations composed of Chinese herbs.

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 April 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Edwin Tom, an individual, trading as Master Herb Co., charging him with the use of unfair and deceptive acts and practices in commerce

in violation of the provisions of that act. On May 8, 1942, the respondent filed his answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondent and Richard P. Whiteley, assistant chief council for the Commission, subject to the approval of the Commission, might be made a part of the record herein and 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 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 matter and being now fully advised in the premises, finds that this proceeding is in the interest 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, Edwin Tom, also known as Shing Tom and Kim Fong Tom, is an individual, trading and doing business as Master Herb Company, with his principal office and place of business located in Los Angeles, Calif., his last known street address being 215 West Ninth Street.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of selling and distributing Chinese herbs, which are offered for sale and sold by him as a treatment for various diseases and disorders of the human body. For some time prior to October 23, 1939, respondent caused his herbs, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States. Respondent maintained a course of trade in his herbs in commerce among and between various States of the United States.

PAR. 3. In the course and conduct of his business respondent, during the period beginning March 21, 1938, and ending October 23, 1939, disseminated and caused the dissemination of advertisements concerning his products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade

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Commission Act; and during such period respondent also disseminated and caused the dissemination of advertisements concerning his products by various means for the purpose of inducing, directly or indirectly, the purchase of his products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the representations contained in such advertisements disseminated, as set forth above, by the United States mails and by advertisements in newspapers, are the following:

GREATER HEALTH

By renewing your glands.

Regain strength and lost vigor, enjoy living.

Eliminate Rheumatism, Arthritis, Asthma, Stomach Ulcers, and various other ailments.

Use Chinese Herbs for greater relief.

T. Foo Yuen. 50 years in Southern California.

MASTER HERB CO.

PAR. 4. Through the use of these statements and representations respondent represented, directly, or by implication, that his herbs constituted a cure or remedy and a competent and effective treatment for various diseases and ailments of the human body, including, among others, rheumatism, arthritis, asthma, and stomach ulcers; and that the use of the herbs would renew the glands of the body, thus enabling the user to regain strength and vigor.

PAR. 5. The Commission finds that respondent's herbs do not constitute a cure or remedy for rheumatism, arthritis, asthma, or stomach ulcers, nor do such herbs possess any therapeutic value in the treatment of any of such conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis, and temporary relief from the paroxysms of asthma. Nor have the herbs any therapeutic value in the treatment of any other diseases or ailments of the human body in excess of affording temporary palliative relief from some of the pains or symptoms which may accompany such disorders. The use of the herbs will not renew the glands, nor enable the user to regain strength or vigor.

PAR. 6. The Commission therefor finds that the representations made by respondent with respect to his herbs, as set forth in paragraphs 3 and 4 herein, were erroneous and misleading, and constituted false advertisements.

PAR. 7. The use by respondent of these false advertisements had the tendency and capacity to mislead and deceive a substantial portion

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of the purchasing public into the erroneous and mistaken belief that respondent's herbs possessed therapeutic properties or values which they did not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's herbs as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent and Richard P. Whiteley, assistant chief counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Edwin Tom, individually, and trading as Master Herb 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 or distribution of respondent's medicinal herbs, do herewith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisements by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) that respondent's herbs constitute a cure or remedy for or possess any therapeutic value in the treatment of stomach ulcers.

(b) that respondent's herbs constitute a cure or remedy for rheumatism, arthritis, or asthma, or possess any therapeutic value in the treatment of such conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis, and temporary relief from the paroxysms of asthma.

(c) that respondent's herbs possess any therapeutic value in the treatment of any other diseases or ailments of the human body in excess of affording temporary palliative relief from some of the pains or other symptoms which may accompany such disorders.

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(d) that the use of respondent's herbs will renew the glands of the body or enable the user to regain strength or vigor.

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 herbs, which advertisement contains any representation prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

THE MAY DEPARTMENT STORES COMPANY, PHYSICIANS ELECTRIC SERVICE CORPORATION, AND SOLOMAN E. MENDELSON

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

Docket 4683. Complaint, Jan. 26, 1942—Decision, Oct. 20, 1942

Where a corporation and the individual who formulated, controlled, and directed its policies, acts, and practices, engaged in manufacture and interstate sale and distribution of their "Pescor Shortwavatherm" short-wave diathermic device; by means of advertisements in newspapers, circulars, leaflets, and pamphlets—

- (a) Represented that their said device or apparatus, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments by individual self-application in the home, was a scientific, safe, harmless, and effective means for the relief, cure, or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, painful menstruation, female disorders, and many other ailments, and for the alleviation of pain resulting therefrom; and that its use would have no ill effects; and

Where a department store, engaged in sale and distribution of a substantial portion of such devices, delivered to it on consignment by said corporation, which collaborated by preparing, editing, and approving its drafts of advertisements for newspaper publications, and in supplying to it circulars and leaflets for local distribution; by means of such advertisements—

- (b) Represented that said "Pescor Shortwavatherm" device, when used in the home as above set forth, was a scientific, safe, harmless, and effective means and method for relief, cure, or treatment of arthritis, sinus infection, lumbago, bronchitis, laryngitis, head colds, and rheumatism;

The facts being individual self-application of device in question by the unskilled lay public in the home, under prescribed or usual conditions, would not accomplish the results claimed; it was not a scientific, safe, harmless, and effective means for use by such public for the relief, cure, or treatment of self-diagnosed ailments or for the alleviation of pain resulting therefrom, and might cause severe electric burns or other serious injury; there are conditions and ailments in which short-wave diathermy is contra-indicated, and in which use thereof may result in serious and irreparable injury, including delay of proper diagnosis for treatment of serious underlying difficulties, of which such pains as neuralgia or neuritis may be merely symptomatic; in diseases and conditions in which diathermy may be indicated, efficacy thereof is dependent upon the method and duration of use; and member of lay public is unable either correctly to diagnose his ailment, or to determine method and duration of use of diathermy where indicated; and

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Where said corporation, individual, and store—

(c) Failed to reveal facts material in the light of said representations, and with respect to consequences which might result from use of such device under usual or prescribed conditions, including said possibility of serious and irreparable injury; and that device might be used safely only after competent medical authority had determined that diathermy was indicated and had prescribed frequency and amount of application of treatments, and user had been adequately instructed in operating the device by a trained technician;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing its purchase of said device:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Lawler, Felix & Hall and *Mr. Brenton L. Metzler*, of Los Angeles, Calif., for The May Department Stores Co.

Mr. Clifford Thoms, of Los Angeles, Calif., for Soloman E. Mendelsohn.

COMPLAINT

Pursuant to the provisions of the Federal 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 May Department Stores Co., a corporation, Physicians Electric Service Corporation, a corporation, and Soloman E. Mendelsohn, individually, and as an officer of said Physicians Electric Service 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. Physicians Electric Service Corporation is a corporation created, organized, and existing under and by virtue of the laws of the State of California, with its office and principal place of business at the Professional Building, 1054-1056 West Sixth Street, Los Angeles, Calif.

Soloman E. Mendelsohn is an individual and is also president and treasurer of Physicians Electric Service Corporation with his office and principal place of business at the same address as the aforesaid corporate respondent.

The May Department Stores Co. is a corporation duly organized and existing under the laws of the State of New York. The said re-

spondent's California office and principal place of business within said State is located at Eighth Street and Broadway, Los Angeles, Calif.

Respondent, Solomon E. Mendelsohn, as an officer of said Physicians Electric Service Corporation, formulates, controls, and directs the policies, acts, and practices of said corporate respondent. The said respondents act and have acted in conjunction and in cooperation with each other and with The May Department Stores Co. in performing the acts and practices hereinafter alleged.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain short-wave diathermic device advertised as PESCOR SHORTWAVATHERM.

The said device is composed principally of a high-frequency generator encased in an all-steel cabinet. The circuit is a regenerative feed-back circuit, incorporating two type T-55 oscillator tubes, powered by two transformers. Plate voltage supply through a specially constructed four-position switch. This switch controls plate supply through separate primary voltage stages on the power transformer, the secondary voltage being varied from 1,250, 1,500 or 1,700 volts. The filament supply transformer is also controlled through the above-mentioned special switch, with 125-volt primary and 7½ volt secondary. The patient's circuit is through a helix coil and variable condenser with two conventional sponge rubber encased diathermy pads, approximating 6 by 8 inches. The device is designed and operated at approximately 12 to 16 meters with a power output of 200 to 250 watts. The application to the patient is made usually by placing the condenser pads in such position that the power may pass between said condenser pads through the affected area of the body at stated intervals for varying periods of time.

The said device is manufactured by the Physicians Electric Service Corporation and a substantial portion of the aforesaid sale and distribution has been effected by respondent, The May Department Stores Co., through deliveries of said device to said respondent on consignment by said Physicians Electric Service Corporation.

The aforesaid sale and distribution of said device has been further accomplished by respondent, The May Department Stores Co., through the collaboration of said Physicians Electric Service Corporation in preparing, editing and approving said respondent's drafts of advertisements for newspaper publication, and in printing for and supplying to said respondent, The May Department Stores Co., circulars, leaflets, or pamphlets used in local distribution and in answering inquiries by mail.

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

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in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; 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 newspapers and by circulars, leaflets, or pamphlets are the following:

Pescor Engineers, after years of diligent research, now present the PESCOR SHORTWAVE THERM * * * incorporating safety features.

Applications may be made by any one following simple instructions.

Outstanding results—Exceptional results.

Physicians prescribe and recommend Short Wave Diathermy in many ailments, such as the following:

Addison's Disease	Fractures
Adhesions	Gangrene
Amenorrhoea	Gastric Allments
Ankylosis	Goiter (Selected)
Arthritis	Hay Fever
Arteriosclerosis	Head Colds
Cardiac Allments (Selected)	Hodgkin's Disease
Chilblains	Impetigo
Chorea	Insomnia
Colitis	Intestinal Neurosis
Constipation	Kidney Diseases
Cystitis	Laryngitis
Dysmenorrhoea	Leucorrhoea
Empyema	Liver Diseases
Enuresis	Lumbago
Erysipelas	Lymphadenitis
Folliculitis	Marasmus

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Migrane	Rheumatism
Mumps	Reynaud's Disease
Muscle Ailments	Sciatica
Nephritis	Septicemia
Neurasthenia	Sinus Infection
Neuritis	Spinal Cord Ailments
Onychia	Spleen
Orchitis	Synovitis
Ovaritis	Tonsillitis
Pancrea Ailments	Urinary Ailments
Paralysis	Vaginitis
Phlebitis	

Save time * * * money! Powerful short-wave diathermy treatments taken at home * * *

PESCOR SHORTWAVATHERM

* * * Same power as physicians'. Extremely simple, safe in operation. New! * * * a short wave diathermy available for home use! Simple to operate and regulate.

Short wave diathermy treatments at home! Right when you need it most.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondents represent that their device or apparatus, advertised as PESCOR SHORTWAVATHERM, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a scientific, safe, harmless, and effective means and method for the relief, cure, or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, painful menstruation, female disorders, and many other ailments, and for the alleviation of pain resulting therefrom; and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing advertisements and representations are grossly exaggerated, false, and misleading.

In truth and in fact, the individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, will not accomplish the results claimed by the respondents, and is not a scientific, safe, harmless, and effective means and method to be used by the unskilled lay public for the relief, cure, or treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom, and may cause severe electric burns or other serious and irreparable injury to health.

The said device does not constitute a competent treatment for conditions of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; acute inflammation of the muscles, such as lumbago and myositis; acute inflammation of the bursae, such as bursitis; acute

inflammation of the joints, such as acute inflammatory arthritis; and rheumatic pains associated with acute inflammatory conditions of the joints, bursae, nerves, and muscles. Such treatment as aforesaid may result in further swelling of the inflamed tissue, thereby increasing the congestion of the inflamed part and in spreading the inflammation to adjacent tissue and allowing the absorption of toxins, when present.

Short-wave diathermy is contra-indicated in all cases of menstruation, pregnancy, gastric ulcers, acute appendicitis, in areas where there is a probable malignancy, and where there is a hemorrhagic diathesis.

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 device to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and fail to reveal that the use of said device may result in serious and irreparable injury to health.

In truth and in fact, the use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptomatic of some deeper, underlying disease or cause (such as pains due to tuberculosis of the joints, syphilis, and other infectious processes, or to tumor or cancer) may cause serious injury to health and also delay proper diagnosis and treatment.

The application of PESCOR SHORTWAVE THERM in treating conditions of acute sinus trouble may result in further increasing congestion of the mucous membranes of the sinuses, nose, and throat, and facilitate extension of the infections and increased absorption of bacterial toxins.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in severe tissue destruction and severe burns.

Cancer or tuberculosis of the spine may evidence itself by severe pains in the knees and the application of diathermy by the untrained layman may delay proper diagnosis and treatment.

The application of this device for the treatment of pain in the extremities in the presence of advanced blood vessel changes of the legs or arms, when given in excess dosage, will cause serious injuries and may lead to gangrene and necessitate amputation of the legs or arms.

There are many diseases and conditions in the treatment of which diathermy would be contraindicated. There are other conditions in

which the efficacy of diathermy is dependent upon the method and duration of its use. In both of these classes of cases, the use of diathermy may aggravate rather than relieve such conditions. Many conditions, including some of those for which respondents recommend this device, are sometimes symptomatic or indicative of underlying systemic disorders for which diathermy would have no therapeutic value and may even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

Furthermore, said advertisements are false, as aforesaid, in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

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

PAR. 8. 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 the 26th day of January 1942 issued and thereafter served its complaint in this proceeding upon the respondents, The May Department Stores Co., a corporation, Physicians Electric Service Corporation, a corporation, and Solomon E. Mendelsohn, individually, and as an officer of Physicians Electric Service Corporation, charging them with the use of unfair and

deceptive acts and practices in commerce in violation of the provisions of said act.

On February 18, 1942, the respondents, Physicians Electric Service Corporation, a corporation, and Soloman E. Mendelsohn, individually, and as an officer, of Physicians Electric Service Corporation, filed their answer in this proceeding admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. On February 14, 1942, the respondent, The May Department Stores Co., a corporation, filed its answer in this proceeding denying the allegations of the complaint.

A hearing was held in this matter on July 30, 1942, at which time a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent, The May Department Stores Co., a corporation, was read into the record in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and which stipulation further provided that the Commission may proceed upon said statement of facts without oral argument or the filing of briefs to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding. Said respondent, The May Department Stores Co., a corporation, 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 and stipulation read into the record, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Physicians Electric Service Corporation, is a corporation created, organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at the Professional Building, 1054-1056 West Sixth Street, Los Angeles, Calif.

Soloman E. Mendelsohn, is an individual, and is also president and treasurer, of Physicians Electric Service Corporation, with his office and principal place of business at the same address as the aforesaid corporate respondent.

The May Department Stores Co., is a corporation, duly organized and existing under the laws of the State of New York. The said

respondent's California office and principal place of business within said State is located at Eighth Street and Broadway, Los Angeles, Calif.

Respondent, Soloman E. Mendelsohn, as an officer, of said Physicians Electric Service Corporation, formulates, controls and directs the policies, acts and practices of said corporate respondent. The said respondents act and have acted in conjunction and in cooperation with each other and with The May Department Stores Co. in performing the acts and practices hereinafter alleged.

PAR. 2. The respondents, Physicians Electric Service Corporation, a corporation, and Soloman E. Mendelsohn, are now and for more than one year last past have been, engaged in the sale and distribution of a certain short-wave diathermic device advertised as **PESCOR SHORTWAVE THERM.**

The respondent, The May Department Stores Co., a corporation, prior to January 4, 1941, was engaged in the sale and distribution of said device.

The said device is composed principally of a high frequency generator encased in an all steel cabinet. The circuit is a regenerative feed back circuit, incorporating two type T-55 oscillator tubes, powered by two transformers. Plate voltage supply through a specially constructed four position switch. This switch controls plate supply through separate primary voltage stages on the power transformer, the secondary voltage being varied from 1250, 1500 or 1700 volts. The filament supply transformer is also controlled through the above-mentioned special switch, with 125-volt primary and 7½-volt secondary. The patient's circuit is through a helix coil and variable condenser with two conventional sponge rubber encased diathermy pads, approximating 6 by 8 inches. The device is designed and operated at approximately 12 to 16 meters with a power output of 200 to 250 watts. The application to the patient is made usually by placing the condenser pads in such position that the power may pass between said condenser pads through the affected area of the body, at stated intervals for varying periods of time.

The said device is manufactured by the Physicians Electric Service Corporation, and a substantial portion of the aforesaid sale and distribution has been effected by respondent, The May Department Stores Co., through deliveries of said device to said respondent on consignment by said Physicians Electric Service Corporation.

The aforesaid sale and distribution of said device has been further accomplished by respondent, The May Department Stores Co., through the collaboration of said Physicians Electric Service Corporation in preparing, editing and approving said respondent's drafts

of advertisements for newspaper publication and in printing for and supplying to said respondent, The May Department Stores Co., circulars, leaflets, or pamphlets used in local distribution.

In the course and conduct of their business, the respondents cause said device, when sold, to be transported from their places of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of their aforesaid business, the respondents, Physicians Electric Service Corporation and Solomon E. Mendelsohn, have disseminated, and have caused the dissemination of, false advertisements concerning their said product by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and said respondents have also disseminated, and have caused the dissemination of, false advertisements concerning their said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

Pescor Engineers, after years of diligent research, now present the PESCOR SHORTWAVATHERM * * * incorporating safety features.

Applications may be made by any one following simple instructions.

Outstanding results—Exceptional results.

Physicians prescribe and recommend Short Wave Diathermy in many ailments, such as the following:

Addison's Disease	Dysmenorrhea
Adhesions	Empyema
Amenorrhoea	Enuresis
Ankylosis	Erysipelas
Arthritis	Folliculitis
Arteriosclerosis	Fractures
Cardiac Ailments (Selected)	Gangrene
Chilblains	Gastric Ailments
Chorea	Golter (Selected)
Colitis	Hay Fever
Constipation	Head Colds
Cystitis	Hodgkin's Disease

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Impetigo	Orchitis
Insomnia	Ovaritis
Intestinal Neurosis	Pancrea Ailments
Kidney Diseases	Paralysis
Laryngitis	Phlebitis
Leucorrhea	Rheumatism
Liver Diseases	Reynaud's Disease
Lumbago	Sciatica
Lymphadenitis	Septicemia
Marasmus	Sinus Infection
Migrane	Spinal Cord Ailments
Mumps	Spleen
Muscle Ailments	Synovitis
Nephritis	Tonsilitis
Neurasthenia	Urinary Ailments
Neuritis	Vaginitis
Onychia	

Save time * * * money! Powerful short-wave diathermy treatments taken at home * * *

PESCOR SHORTWAVATHERM

* * * Same power as physicians'. Extremely simple, sale in operation. New! * * * a short wave diathermy available for home use! Simple to operate and regulate.

Short wave diathermy treatments at home! Right when you need it most.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondents, Physicians Electric Service Corporation and Soloman E. Mendelsohn, represent that their device or apparatus, advertised as PESCOR SHORTWAVATHERM, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a scientific, safe, harmless, and effective means and method for the relief, cure, or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and colds, painful menstruation, female disorders, and many other ailments, and for the alleviation of pain resulting therefrom; and that its use will have no ill effects upon the human body.

PAR. 5. In the course and conduct of its aforesaid business the respondent, The May Department Stores Co., has disseminated, and has caused the dissemination of, false advertisements concerning its said product by United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and said respondent has also disseminated, and has caused the dissemination of, false advertisements concerning its said product by various means, for the purpose of inducing, and which are likely

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to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Save time—money! Powerful short wave diathermy treatments taken at home.

PESCOR SHORTWAVATHERM

used to treat arthritis, sinus infection, lumbago, bronchitis.

Same power as physicians.

Extremely simple, safe in operation.

Laryngitis or bronchitis treated through cuff electrode.

Head colds or sinus infection treated through the sinus mask.

New! * * * a short wave diathermy available for home use.

Short wave diathermy treatments at home! Right where you need it most.

Used by physicians in treating rheumatism, lumbago, arthritis * * *

PAR. 6. By the use of the representations hereinabove set forth, and other representations similar thereto, but not specifically set out herein, respondent, The May Department Stores Co., represented that said device or apparatus advertised as PESCOR SHORTWAVATHERM when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home is a scientific, safe, harmless, and effective means and method for relief, cure, or treatment of arthritis, sinus infection, lumbago, bronchitis, laryngitis, head colds, and rheumatism.

PAR. 7. The foregoing advertisements and representations are grossly exaggerated, false, and misleading.

In truth and in fact, the individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, will not accomplish the results claimed by the respondents, and is not a scientific, safe, harmless, and effective means and method to be used by the unskilled lay public for the relief, cure, or treatment or self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom, and may cause severe electric burns, or other serious and irreparable injury to health.

The said device does not constitute a competent treatment for conditions of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; acute inflammation of the muscles, such as

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lumbago and myositis; acute inflammation of the bursae, such as bursitis; acute inflammation of the joints, such as acute inflammatory arthritis; and rheumatic pains associated with acute inflammatory conditions of the joints, bursae, nerves, and muscles. Such treatment as aforesaid may result in further swelling of the inflamed tissue, thereby increasing the congestion of the inflamed part, and in spreading the inflammation to adjacent tissue, and allowing the absorption of toxins, when present.

Short wave diathermy is contraindicated in all cases of menstruation, pregnancy, gastric ulcers, acute appendicitis, in areas where there is a probable malignancy, and where there is a hemorrhagic diathesis.

PAR. 8. 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 device to which the advertisements relate under the conditions prescribed in such advertisements, or under such conditions as are customary or usual, and fail to reveal that the use of said device may result in serious and irreparable injury to health.

In truth and in fact, the use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptomatic of some deeper, underlying disease or cause (such as pains due to tuberculosis of the joints, syphilis, and other infectious processes, or to tumor or cancer) may cause serious injury to health, and also delay proper diagnosis and treatment.

The application of PESCOR SHORTWAVATHERM in treating conditions of acute sinus trouble may result in further increasing congestion of the mucous membranes of the sinuses, nose, and throat, and facilitate extension of the infections and increased absorption of bacterial toxins.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in severe tissue destruction and severe burns.

Cancer or tuberculosis of the spine may evidence itself by severe pains in the knees, and the application of diathermy by the untrained layman may delay proper diagnosis and treatment.

The application of this device for the treatment of pain in the extremities in the presence of advanced blood-vessel changes of the legs or arms, when given in excess dosage, will cause serious injuries and may lead to gangrene and necessitate amputation of the legs or arms.

Conclusion

There are many diseases and conditions in the treatment of which diathermy would be contraindicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of these classes of cases, the use of diathermy may aggravate rather than relieve such conditions. Many conditions, including some of those for which respondents recommend this device, are sometimes symptomatic or indicative of underlying systemic disorders for which diathermy would have no therapeutic value and may even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

Furthermore, said advertisements are false, as aforesaid, in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

PAR. 9. The Commission further finds that the respondent, The May Department Stores Co., has not advertised said device in any manner since April 28, 1940, has not sold any of said devices since January 4, 1941, and has not offered any for sale since January 31, 1941.

PAR. 10. The use by the respondents, The May Department Stores Co., a corporation, and Physicians Electric Service Corporation, a corporation, and Solomon E. Mendelsohn, individually, and as an officer, of Physicians Electric Service Corporation, of the foregoing false, deceptive, and misleading statements and representations respectively disseminated by them as aforesaid, with respect to their 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 statements, representations, and advertisements are true, and to induce such portion of the purchasing public because of such erroneous and mistaken belief to purchase the respondents' device.

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

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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 answer of respondents, Physicians Electric Service Corporation, a corporation, and Soloman E. Mendelsohn, individually, and as an officer of Physicians Electric Service Corporation, in which answer these 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 the facts; and a stipulation as to the facts entered into upon the record between counsel for the Commission and counsel for respondent, The May Department Stores Co., a corporation, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon said respondent findings as to the facts and conclusions based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Physicians Electric Service Corporation, a corporation, its officers, and Soloman E. Mendelsohn, individually, and as an officer of said corporation, and said respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their short-wave diathermic device known as PESCOR SHORTWAVATHERM, or any other device or apparatus of substantially similar character, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, concerning the device or apparatus designated PESCOR SHORTWAVATHERM; and from disseminating or causing to be disseminated any advertisement by any means for the purpose of influencing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the device or apparatus designated PESCOR SHORTWAVATHERM, which advertisement:

1. Represents, directly or through inference, that said device or apparatus is safe or harmless.

2. Represents, directly or through inference, that said device is a scientific, safe, and harmless means and method to be used by the

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unskilled lay public for the treatment, relief, or cure of self-diagnosed diseases and ailments of the human body or for the alleviation of pain resulting therefrom.

3. Represents, directly or through inference, that said device constitutes a competent or effective treatment for rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, head colds, painful menstruation of female troubles, or for the alleviation of pain resulting therefrom, or for any other ailment or condition of the human body, unless such advertisement is specifically limited to those cases which do not involve acute inflammatory processes.

4. Fails to reveal clearly, conspicuously and unequivocally that said device or apparatus is not safe to use unless and until a competent medical authority has determined as a result of diagnosis that the use of diathermy is indicated and has prescribed the frequency and rate of application of such diathermy treatments, and the user has been thoroughly and adequately instructed by a trained technician in the use of such diathermy device or apparatus.

It is further ordered, That respondent, The May Department Stores 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 said device or apparatus designated as PESCOR SHORTWAVATHERM, or any other device or apparatus of substantially similar character, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly 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 concerning the device or apparatus designated PESCOR SHORTWAVATHERM; and from disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the device or apparatus designated PESCOR SHORTWAVATHERM, which advertisement:

1. Represents, directly or through inference, that such device or apparatus is safe or harmless.

2. Represents, directly or through inference, that said device is a scientific, safe, and harmless means and method to be used by the unskilled lay public for the treatment, relief or cure of self-diagnosed diseases and ailments of the human body or for the alleviation of pain resulting therefrom.

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3. Represents, directly or through inference, that said device constitutes a competent or effective treatment for arthritis, sinus infection, lumbago, bronchitis, laryngitis, head colds or rheumatism, or for the alleviation of pain resulting therefrom, or for any other ailment or condition of the human body, unless such advertisement is specifically limited to those cases which do not involve acute inflammatory processes.

4. Fails to reveal clearly, conspicuously and unequivocally that said device or apparatus is not safe to use unless and until a competent medical authority has determined as a result of diagnosis that the use of diathermy is indicated and has prescribed the frequency and rate of application of such diathermy treatments, and the user has been thoroughly and adequately instructed by a trained technician in the use of such diathermy device or apparatus.

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

Syllabus

IN THE MATTER OF
UNITED DRUG COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3729. Complaint, Mar. 4, 1939—Decision, Oct. 26, 1942*

Where a corporation, engaged in the compounding and in the competitive interstate sale and distribution of its "Cara Nome" face powder, among various cosmetic preparations—

Sold its said powder so packaged that outside container of package was twice the size of the inmost "powder pouch," in turn included in an intermediate container, whereby powder content much greater than was the fact was indicated, absent opening enabling prospective purchaser to determine size of pouch and opportunity of content inspection by reason of cellophane wrapping employed in recent years;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public with respect to the quantity of powder contained within said packages, and of causing it to purchase substantial quantities of powder in question; whereby trade was diverted unfairly to said corporation from its competitors who do not use any such misleading method;

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.

As respects the insistence of a seller of face powder engaging in the alleged misleading practice of packaging the same so contained that innermost "powder pouch," enclosed by larger container, in turn included in a still larger container, size, and capacity of which were such as to indicate that quantity of powder was much greater than was the fact, in the absence of any visual or practical opportunity for determining the true content, that it is the custom and practice of the trade to package cosmetic products in attractive containers, frequently involving use of those which do not accurately indicate the exact quantity of the product enclosed; the Commission was of the opinion, nevertheless, after making due allowance for such factors, that the particular package in question was misleading, in that size of outside container was substantially in excess of that which could reasonably be considered necessary for packaging the quantity of powder therein contained.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash and *Mr. Carrel F. Rhodes* for the Commission.

Mr. William F. Davis, Jr., of Boston, Mass., and *Mr. Richard A. Mahar*, 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 United Drug Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, United Drug Co., is a corporation, organized under the laws of the State of Delaware, having its office and principal place of business in the city of Boston, State of Massachusetts.

PAR. 2. The respondent is now, and has been for several years last past, engaged in the business of compounding, selling and distributing various cosmetic preparations. One of the preparations compounded and distributed by respondent is known as and sold under the name "Cara Nome Face Powder." Respondent causes its said products, when sold, to be transported from its place of business in the city of Boston, State of Massachusetts, to the purchasers thereof located in various States of the United States other than the State of Massachusetts and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia. Respondent sells its said preparation "Cara Nome Face Powder" to retail stores for resale to the purchasing and consuming public.

PAR. 3. Respondent, in the course and conduct of its business in said commerce, as aforesaid, is in competition with other corporations and with firms, partnerships, and individuals selling and distributing cosmetics and allied products in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors in said commerce are many who do not, in any manner, misrepresent the quantity or amount of said preparation which is enclosed in the container in which said preparation is offered for sale and sold to the purchasing and consuming public, and who do not misrepresent, in any manner, the quantity of their preparation which is offered for sale and sold.

PAR. 4. Respondent packages its said product, "Cara Nome Face Powder," in cardboard containers which are so completely enclosed in cellophane wrappers as not to afford an opportunity for purchasers to examine or inspect the content thereof to determine the quantity of

powder therein contained until after a purchase has been made and the cellophane wrapper destroyed.

Said cardboard containers are of a capacity and size greatly in excess of that required to package the quantity of said powder actually placed therein by the respondent. Said containers, when offered for sale and sold to the purchasing public, are not filled to capacity with the said powder but are only partially filled, the quantity of powder contained therein varying from 50 to 70 percent of the capacity of said containers. The practice of the respondent of only partially filling said containers with said powder is what is known in the trade and generally as "slack filling," and is a practice that is not indulged in by a great majority of the competitors of the respondent because of the inherent deceptive capacity of such practice, as purchasers of such products, expect the containers thereof to be filled to approximate capacity.

PAR. 5. The acts and practices of the respondent in connection with the offering for sale, sale and distribution of its said product in said commerce as aforesaid in "slack filling" said containers and in using containers of a size and capacity of from 30 to 50 percent greater than that necessary or required to package the quantity of powder actually placed in such containers are misleading and deceptive and have the capacity and tendency to and do lead prospective purchasers erroneously and mistakenly to believe that said containers are filled to capacity and contain the quantity of powder indicated by the capacity of the containers, and because of said erroneous and mistaken belief to purchase substantial quantities of respondent's said face powder. As a result thereof, trade in said commerce is diverted unfairly to respondent from its competitors, who do not engage in the practices aforesaid, to their injury, and to the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 4, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, United Drug 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 that act. After

the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorneys for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto (together with a motion to dismiss the complaint), 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. The respondent, United Drug Co., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business located in the city of Boston, Mass. Respondent is now, and for a number of years last past has been, engaged in the business of compounding, selling, and distributing various cosmetic preparations, one of which is a face powder designated by respondent as "Cara Nome" face powder. Respondent's products are sold and distributed to the public principally through retail dealers.

PAR. 2. In the course and conduct of its business respondent causes and has caused its products, when sold, to be transported from its place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and 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 at all times mentioned herein has been, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of face powders and other cosmetic preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The cardboard containers in which respondent packages its Cara Nome face powder are of a size and capacity greatly in

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excess of that required to package the quantity of powder actually placed therein. In addition to the outside container, there is an inner container or filler, and within this inner container is another and smaller container, referred to as the powder pouch, in which the powder is placed. This powder pouch is approximately one-half the size of the outside container. At one time respondent also used in its packages a piece of corrugated cardboard, which was placed beneath the powder pouch. Later, the use of this corrugated cardboard was discontinued and a piece of smooth cardboard was placed on top of the powder pouch. At no time has there been any opening or window in the outside container which would enable prospective purchasers to determine the size of the powder pouch or the quantity of powder actually contained in the package. In recent years the package has been wrapped in cellophane, which renders an inspection of the contents of the package impossible unless the cellophane wrapper is broken.

The Commission finds from an examination of the containers, and also from the testimony of certain members of the public, that the appearance of the package is misleading, that the size and capacity of the outside container are such as to indicate that the quantity of powder contained within the package is much greater than is actually the fact.

It is insisted by respondent that the custom and practice of the trade is to package cosmetic products in attractive containers, and that such practice frequently involves the use of containers which do not accurately indicate the exact quantity of the product enclosed within the package. After making due allowance, however, for these factors, the Commission is nevertheless of the opinion that respondent's package is misleading in that the size of the outside container is substantially in excess of that which can reasonably be considered necessary for the packaging of the quantity of powder contained therein.

PAR. 5. The use by respondent of the method of packaging herein described has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the quantity of powder contained within respondent's packages, and to cause such portion of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to respondent from its competitors, among whom are those who do not use a method of packaging which is misleading to the public.

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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 within the intent and meaning of the Federal Trade Commission Act.

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 (together with a motion to dismiss the complaint), testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, United Drug Co., 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 face powder and other cosmetic products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale or selling respondent's products in containers or packages of a size or capacity substantially larger than that required for packaging the quantity of product actually contained therein.

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

It is further ordered, That the respondent's motion to dismiss the complaint herein be, and it hereby is, denied.

Complaint

IN THE MATTER OF

VIVIAN S. NASH

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

Docket 4811. Complaint, Aug. 13, 1942—Decision, Oct. 26, 1942

Where an individual, engaged in the manufacture and interstate sale and distribution of certain so-called "Bee-Dew" preparations recommended for hair and scalp treatments and use as deodorant; by means of advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature—

(a) Represented, through statements and pictorial representations, including "before and after" depictions, that preparations designated by her as Bee-Dew "Special Hair Grower," "Special U-Gro," "Scalp Oil," "Shampoo," "Pressing Oil" and "U-Gro," provided a remedy for falling hair, baldness, dull hair, scalp irritation, and dandruff, and an effective treatment therefor, use of which would cause new hair to grow;

The facts being that her said products had no therapeutic value in excess of cleansing the hair and scalp, allaying itching due to minor irritations, and facilitating the removal of loose dandruff scales, and would not cause new hair to grow; and

(b) Represented that her "Bee-Dew O-No" deodorant preparation would assure complete protection from offensive body odors;

The facts being protection afforded was for a limited time only, and not complete;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing purchase of said products because of such belief:

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

Mr. S. F. Rose 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 Vivian S. Nash, 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 against said respondent stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, is an individual, now trading and doing business under the name of Bee-Dew Cosmetic Co., with her prin-

principal place of business located at 703-705 East Forest Avenue, Detroit, Mich.

PAR. 2. The respondent was during the month of October 1937, and for more than a year prior thereto, the president of Bee-Dew Laboratories, a corporation organized under the laws of the State of Michigan. For some time subsequent thereto and prior to February 26, 1941, the said respondent was president of Bee-Dew Products, Inc., also a corporation organized under the laws of the State of Michigan. On said last named date the charter of Bee-Dew Products, Inc., was dissolved. During all the time respondent was president of said corporations she owned a large percentage of the capital stock of each of said corporations, and formulated, directed and controlled their policies and activities. Each of said corporations was engaged in the sale of a similar line of various hair and face cosmetics. Upon the dissolution of Bee-Dew Products, Inc., the respondent, under the trade name of Bee-Dew Cosmetic Co., has continued to manufacture, sell, and distribute substantially the same preparations as those sold by the corporations of which she was president.

PAR. 3. The respondent, Vivian S. Nash, an individual, is now and has been for more than 5 years last past, as stated in the preceding paragraph, engaged in the manufacture, sale, and distribution of certain preparations recommended for hair and scalp treatments, including those designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," and "Bee-Dew U-Gro."

In the course and conduct of her business, the respondent causes said preparations, when sold, to be transported from her place of business in the State of Michigan to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations, in commerce, 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 her business aforesaid has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparations recommended for hair and scalp treatment, by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparations by various means, for the purpose of inducing and which are likely to induce, directly or in-

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directly, the purchase of 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 advertisements, disseminated and caused to be disseminated as hereinabove set forth concerning her said preparations recommended for hair and scalp treatments, by the United States mails, by advertisements inserted in newspapers and periodicals, circulars, leaflets, pamphlets, and other advertising literature, are the following:

Don't surrender to short, broken, harsh hair. Every woman owes it to herself to hold on to her youth and beauty.

Before

After

(Picture of a lady
with short hair.)

(Picture of a lady
with long hair.)

Use Bee-Dew Scalp Oil, Bee-Dew Shampoo, Bee-Dew Pressing Oil, Bee-Dew Special U-Gro.

Bee-Dew Special U-Gro.

Stop that falling hair and scalp irritation. Remove dandruff.

Bee-Dew U-Gro.

Remove dandruff. Stop falling hair and scalp irritations.

Bee-Dew Special U-Gro.

Check that falling hair. Bring life to your scalp.

Short, stubby, dead looking hair or even long hair not well kept is never admirable. Beautiful hair, then, is the first beauty secret.

Bee-Dew Special U-Gro.

Beautiful hair requires a healthy scalp. Thinning hair, bald spots, dull hair and itchy scalp indicate an unnatural scalp condition.

And concerning *Bee-Dew O-No* are the following:

Instant sweetness and complete protection is yours now, through *Bee-Dew O-No*, the perfect and sure deodorant cream.

Assures certain, instant, complete protection from offensive body odors.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, and by pictorial representations, respondent represents and has represented that her said preparations recommended for use in hair and scalp treatments provide a cure or remedy for falling hair, baldness, dull hair, scalp irritation, and dandruff, and constitute an effective treatment therefor, and that their use will cause new hair to grow.

In the same manner the respondent represents that the preparation advertised and designated as *Bee-Dew O-No* will assure complete protection from offensive body odors.

PAR. 6. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, the use of said hair and scalp treatments, either alone or in combination with each other, do not constitute a cure or remedy for falling hair, bald-

ness, dull hair, scalp irritations or dandruff. Respondent's preparations have no therapeutic value in the treatment of such disorders or conditions in excess of cleansing the hair and scalp and allaying itching due to minor irritations of the scalp and in facilitating the removal of accumulated loose dandruff scales. Said preparations will have no therapeutic value in the treatment of baldness and will not cause new hair to grow. Respondent's preparation Bee-Dew O-No will give protection from body odors for a limited time only and will not give complete protection from such odors.

PAR. 7. The use by the respondent of the aforesaid false, deceptive and misleading statements and representations and others of a similar nature, disseminated as aforesaid, has had and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a number of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said preparations.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 13th day of August 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Vivian S. Nash, an individual, charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On the 11th day of September 1942, the respondent filed her answer, in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual, now trading and doing business under the name of Bee-Dew Cosmetic Co., with her principal place of business located at 703-705 East Forest Avenue, Detroit, Mich.

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PAR. 2. The respondent was, during the month of October 1937, and for more than a year prior thereto, the president of Bee-Dew Laboratories, a corporation, organized under the laws of the State of Michigan. For some time subsequent thereto and prior to February 26, 1941, the said respondent was president of Bee-Dew Products, Inc., also a corporation organized under the laws of the State of Michigan. On said last named date the charter of Bee-Dew Products, Inc., was dissolved. During all the time respondent was president of said corporations she owned a large percentage of the capital stock of each of said corporations, and formulated, directed, and controlled their policies and activities. Each of said corporations was engaged in the sale of a similar line of various hair and face cosmetics. Upon the dissolution of Bee-Dew Products, Inc., the respondent, under the trade name of Bee-Dew Cosmetic Co., has continued to manufacture, sell and distribute substantially the same preparations as those sold by the corporations of which she was president.

PAR. 3. The respondent, Vivian S. Nash, an individual, is now and has been for more than 5 years last past, as stated in the preceding paragraph, engaged in the manufacture, sale, and distribution of certain preparations recommended for hair and scalp treatments, including those designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," and "Bee-Dew U-Gro," and also of a preparation designated "Bee-Dew O-No," recommended for use as a deodorant.

In the course and conduct of her business the respondent causes said preparations, when sold, to be transported from her place of business in the State of Michigan to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce 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 her business aforesaid has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her 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 the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Don't surrender to short, broken, harsh hair. Every woman owes it to herself to hold on to her youth and beauty.

Before

(Picture of a lady with short hair.)

After

(Picture of a lady with long hair.)

Use Bee-Dew Scalp Oil, Bee-Dew Shampoo, Bee-Dew Pressing Oil, Bee-Dew Special U-Gro.

Bee-Dew Special U-Gro

Stop that falling hair and scalp irritation. Remove dandruff.

Check that falling hair. Bring life to your scalp.

Short stubby, dead looking hair or even long hair not well kept is never admirable. Beautiful hair, then, is the first beauty secret.

Beautiful hair requires a healthy scalp. Thinning hair, bald spots, dull hair and itchy scalp indicate an unnatural scalp condition.

Bee-Dew U-Gro

Remove dandruff. Stop falling hair and scalp irritations.

Bee-Dew O-No

Instant sweetness and complete protection is yours now, through Bee-Dew O-No, the perfect and sure deodorant cream.

Assures certain, instant, complete protection from offensive body odors.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, and by pictorial representations, respondent represents and has represented that her said preparations recommended for use in hair and scalp treatments provide a cure or remedy for falling hair, baldness, dull hair, scalp irritation, and dandruff, and constitute an effective treatment therefor, and that their use will cause new hair to grow. In the same manner, the respondent represents that the preparation advertised and designated as Bee-Dew O-No will assure complete protection from offensive body odors.

PAR. 6. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, the use of said hair and scalp preparations, either alone or in combination with one another, does not constitute a cure or remedy for falling hair, baldness, dull hair, scalp irritations, or dandruff. Respondent's preparations have no therapeutic value in the treatment of such disorders or conditions in excess of cleansing the hair and scalp, and allaying itching due to minor irritations of the scalp, and in facilitating the removal of accumulated loose dandruff scales. Said preparations will have no therapeutic value in the treatment of baldness and will not

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cause new hair to grow. Respondent's preparation Bee-Dew O-No will give protection from body odors for a limited time only, and will not give complete protection from such odors.

PAR. 7. The use by the respondent of the aforesaid, false, deceptive, and misleading statements and representations, and others of a similar nature, disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a number of the purchasing public, because of such erroneous and mistaken 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 in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered that the respondent, Vivian S. Nash, individually and trading under the name of Bee-Dew Cosmetic Co., or trading under any other name, and her agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of her cosmetic preparations designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," "Bee-Dew U-Gro," and "Bee-Dew O-No," or any other preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from 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,

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as "commerce" is defined in the Federal Trade Commission Act, which advertisement,

(a) represents, directly or by implication, that the preparations designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," and "Bee-Dew U-Gro," either when used alone or in combination with one or more of the others, constitute a cure or remedy for falling hair, baldness, dull hair, scalp irritation, or dandruff, or that any of such preparations will promote the growth of new hair or have any effect upon the growth of hair;

(b) represents, directly or by implication, that said preparations "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," "Bee-Dew Scalp Oil," "Bee-Dew Shampoo," "Bee-Dew Pressing Oil," and "Bee-Dew U-Gro" have any therapeutic values in the treatment of falling hair, baldness, dull hair, scalp irritation, or dandruff, in excess of cleansing the hair and scalp, allaying itching due to minor scalp irritations, and facilitating the removal of loose dandruff scales;

(c) uses the word "grow" or "grower," or any other word which is similar thereto either in spelling or in phonetics, to designate or describe the preparations now designated "Bee-Dew Special Hair Grower," "Bee-Dew Special U-Gro," and "Bee-Dew U-Gro," or otherwise represents that any of said preparations has any effect upon the growth of hair; or

(d) represents, directly or by implication, that the preparation "Bee-Dew O-No" will give complete protection from offensive body odors, or that it will have any effect in excess of affording temporary protection from such odors.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's cosmetic preparations, which advertisement contains any representation 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.

Complaint

IN THE MATTER OF

BEN ARNOVITZ AND WILFORD ARNOVITZ, TRADING AS
UTAH BEVERAGE AND DISTRIBUTING COMPANY

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

Docket 4591. Complaint, Sept. 16, 1941—Decision, Oct. 27, 1942

Where two individuals, engaged in competitive interstate sale of various assortments of merchandise, including candies, gums, nuts, glassware, clocks, and handkerchiefs, which involved use of lottery schemes in sale and distribution to public, a typical assortment consisting of a number of uniform candy bars together with a push card for use in their sale and distribution under a plan, as there explained, by which a customer of said "Baseball" assortment received for 5 cents from 5 to 1 bars, dependent upon receipt of "Home Run," "3-Base Hit," or other legend concealed in that one of the board's 110 disks selected by him, with maker of "Last Play" in first section receiving 2 bars and of "Last Play" on card receiving 3;

Sold such assortments to retailers by whom they were exposed and sold to the purchasing public in accordance with said sales plan, and thereby supplied to and placed in the hands of such retailers 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 do not use chance or lottery methods;

With effect, by reason of such element of chance, of diverting substantial trade unfairly to themselves from their 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. Miles J. Furnas*, 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 Ben Arnovitz and Wilford Arnovitz, individuals, trading and doing business as Utah Beverage and Distributing 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, Ben Arnovitz and Wilford Arnovitz, are individuals, trading and doing business as Utah Beverage and

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Distributing Co., with their office and principal place of business located at 166 Southwest Temple Street, Salt Lake City, Utah. Respondents are now and during the year last past have been engaged in the sale and distribution of candies, gums, nuts, glassware, clocks, handkerchiefs, luggage, cigars, cigarettes, and novelty merchandise, to dealers and other purchasers thereof located in various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise when sold to be transported from their said place of business in the State of Utah to purchasers thereof at their respective points of location in the various other States of the United States other than Utah and in the District of Columbia. There is now and has been during the 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 with corporations and firms engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof respondents sell and have sold to 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 is as follows: This assortment consists of a number of bars of candy of uniform size and value, together with a device commonly called a push card. The push card contains 110 partially perforated disks, on the face of which is printed the word "Push." Sales are 5 cents each. Concealed within each of said disks is a legend which corresponds with a legend appearing on the face of said card. The legend or instructions on the face of the card are as follows:

B A S E B A L L		(5¢)
HOME RUN receives.....	5 Bars	
3-BASE HIT receives.....	3 Bars	
2-BASE HIT receives.....	2 Bars	
1-BASE HIT receives.....	2 Bars	
BASE ON BALLS receives.....	2 Bars	
FOUL receives.....	1 Bar	
OUT receives.....	1 Bar	
Last Play First Section Completed receives.....	2 Bars	
Last Play on Card receives.....	3 Bars	

Sales of respondent's candy by means of said push cards are made in accordance with the above legend or instructions. The legends or

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instructions aforesaid are effectively concealed from purchasers and prospective purchasers until a purchase has been made and the disks separated or removed from said card. The number of said candy bars to be procured by a purchaser for 5 cents is thus determined wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various other assortments of merchandise involving a lot or chance feature but the sales plans or methods by which said merchandise is distributed are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondents' merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their products 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. 4. The sale of merchandise 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 merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute products in competition with respondents, as above alleged, do not use said methods, or any methods involving a game of chance, or the sale of a chance to win something by chance, or any other method which is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their products and by the element of chance involved therein and are thereby induced to buy and sell respondents' products in preference to products of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods.

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

tion 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 September 16, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Ben Arnovitz and Wilford Arnovitz, individuals, trading and doing business as Utah Beverage and Distributing Co., charging them with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. No answer was filed by respondents. Testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (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. The respondents, Ben Arnovitz and Wilford Arnovitz, are individuals, trading as Utah Beverage and Distributing Co., with their office and principal place of business located at 166 Southwest Temple Street, Salt Lake City, Utah. Respondents are, and since 1937 have been, engaged in the sale and distribution of various articles of merchandise, including, among other things, candies, gums, nuts, glassware, clocks, and handkerchiefs.

PAR. 2. In the course and conduct of their business respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Utah to dealers and other 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. Respondents are and have been in substantial competition with other individuals, and with corporations and firms, engaged in

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the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business respondents sell to dealers and other purchasers various assortments of merchandise which involve the use of lottery schemes when such merchandise is sold and distributed to the public.

One of these assortments consists of a number of bars of candy of uniform size and value, together with a device commonly known as a push card. The push card contains 110 partially perforated disks, on the face of each of which is printed the word "Push." All persons desiring to push 1 of such disks pay 5 cents for such privilege. Concealed within each of the disks is a legend which corresponds with one of the legends appearing on the face of the card, the legends being terms used in the game of baseball, such as "Home Run," "2-Base Hit," "Foul," "Out," etc. On the face of the push card appears the following:

BASEBALL		(5¢)
HOME RUN receives.....	5 Bars	
3-BASE HIT receives.....	3 Bars	
2-BASE HIT receives.....	2 Bars	
1-BASE HIT receives.....	2 Bars	
BASE ON BALLS receives.....	2 Bars	
FOUL receives.....	1 Bar	
OUT receives.....	1 Bar	
Last Play First Section Completed receives.....	2 Bars	
Last Play on Card receives.....	3 Bars	

Sales of respondents' candy are made in accordance with these instructions. For example, a person pushing a disk which has concealed within it the legend "Home Run" receives five bars of candy for the 5 cents paid, whereas a person pushing a disk which has concealed within it the legend "Out" receives only one bar of candy for the 5 cents paid. Purchasers have no information as to the number of bars of candy they will receive until after they have pushed the disk and have had an opportunity to examine the legend concealed therein. The quantity of candy which is obtained by a purchaser for the amount of money paid is thus determined wholly by lot or chance.

Other assortments of merchandise sold by respondents involve lot or chance features, but the sales plans or methods involved in such assortments are similar in all material respects to the plan described above, varying only in detail.

PAR. 5. Retail dealers who purchase respondents' merchandise expose and sell such merchandise to the purchasing public in accordance with the sales plans referred to above. Respondents thus supply

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to and place in the hands of others a means of conducting lotteries in the sale of respondents' products. The use by respondents of such sales plans or methods in the sale of their merchandise and the sale of such merchandise to the consuming public by and through the use of such 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. 6. Many persons, firms, and corporations who sell and distribute candy and other merchandise in competition with respondents do not use the sales plans or methods used by respondents, or any other sales plan or method involving the use of games of chance, gift enterprises, or lottery schemes. Because of the element of chance involved in respondents' sales plans or methods, the use of such plans or methods by respondents has the tendency and capacity to divert and has diverted substantial trade unfairly to respondents from their competitors who do not use the same or equivalent plans or methods.

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 complaint of the Commission (no answer having been filed by respondents), testimony and other evidence in support of the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, 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, Ben Arnovitz and Wilford Arnovitz, individually, and trading as Utah Beverage and Distributing 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of candies, gums, nuts, glassware, clocks, handkerchiefs, or any other merchandise, do forthwith cease and desist from:

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1. Supplying to or placing in the hands of others push or pull cards, punch boards, or other lottery devices, either with merchandise or separately, which are to be used, or may be used, in selling or distributing respondents' merchandise, or any merchandise, to the public.
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 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
CORA LEE WILEY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4419. Complaint, Dec. 16, 1940—Decision, Nov. 2, 1942

Where an individual, engaged in interstate sale and distribution of her "SNL" (Suffer No Longer) medicinal preparation; by means of advertisements in newspapers and other advertising literature, directly or by implication—
Represented that her said preparation was a cure or remedy for various diseases and disorders of the female organs, including gonorrhoea, and constituted a competent and effective treatment therefor;

When in fact it had not therapeutic value in the treatment of aforesaid conditions or of gonorrhoea; it being made up of an indiscriminate combination of drugs which in the proportions used and method of use had no basis in medical science;

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 inducing its purchase of said preparation.

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Taggart for the Commission.

COMPLAINT

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

PARAGRAPH 1. Respondent, Cora Lee Wiley, is an individual, with her principal place of business at R. F. D. No. 2, Adel, Ga., from which address she transacts said business.

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 SNL (Suffer No Longer).

In the course and conduct of her business, the respondent causes said medicinal preparation when sold, to be transported from her place

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of business in the State of Georgia to purchasers thereof located in other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of her aforesaid business, 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 purpose of her said product in commerce, as commerce is defined in the Federal Trade Commission Act.

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

In expensive Guaranteed female trouble treatment. 25c, 50c and \$1.00 sizes. Free Literature.

LADIES SNL Treatment. For Female Trouble is absorbed directly by sore congested organs. Relief Over Night. Complete relief guaranteed * * *

SNL (Suffer No Longer) is a hope come true for female trouble sufferers. I have never known it to fail one woman yet, no matter how bad the condition. Fact is, poisons generated into the system from infected female organs cause most all of women's ailments. In trying to do something for myself, I found the very thing that can and will relieve all such suffering. I have an abundance of positive proof that SNL can and does relieve all such suffering. Its action is quick and thorough. Use SNL until you are feeling well, then discontinue. Three to seven treatments will relieve you entirely. No matter how bad your condition, don't despair. SNL is unconditionally guaranteed.

Body heat and SNL form a fume that starts penetrating the congested organs at once. SNL is very powerful yet mild enough to put into the sorest tenderest ear.

* * * the life wrecking tortures and consequences of gonorrhoea have been completely relieved by SNL.

* * * SNL (Suffer No Longer) treatments have never failed one female trouble sufferer yet.

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 her medicinal preparation designated as SNL (Suffer

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No Longer) is a cure or remedy for various diseases and disorders of the female organs, including gonorrhoea, and constitutes a competent and effective treatment for such diseases and conditions.

PAR. 5. The respondent's foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's preparation is not a cure or remedy for various diseases and disorders of the female organs and has no therapeutic value in the treatment of any of such diseases and conditions. It has no value in the treatment of gonorrhoea. Respondent's preparation is made up of an indiscriminate combination of drugs which in the proportions used and method of use has no basis in medical science.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to her 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 December 16, 1940, issued, and on December 19, 1940, served, its complaint in this proceeding upon respondent, Cora Lee Wiley, an individual, 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 and service of said complaint and after other proceedings herein, the Commission by order entered granted respondent's request to file answer out of time and on September 22, 1942, answer was filed by respondent admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts as well as trial examiner's report upon the evidence and briefs in support of and in opposition to the allegations of the complaint. 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

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now fully advised 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, Cora Lee Wiley, is an individual, with her principal place of business at R. F. D. No. 2, Adel, Ga., from which address she transacts said business.

PAR 2. The respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as SNL (Suffer No Longer).

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

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

PAR. 3. In the course and conduct of her aforesaid business, 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 the United States mails and by advertisements in newspapers and other advertising literature, are the following:

Inexpensive Guaranteed female trouble treatment. 25¢, 50¢ and \$1.00 sizes. Free Literature.

LADIES SNL Treatment For Female Trouble is absorbed directly by sore congested organs. Relief Over Night. Complete relief guaranteed * * *

SNL (Suffer No Longer) is a hope come true for female trouble sufferers. I have never known it to fail one woman yet, no matter how bad the condition. Fact is, poisons generated into the system from infected female organs cause most all of women's ailments. In trying to do something for myself, I found the very thing that can and will relieve all such suffering. I have

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an abundance of positive proof that SNL can and does relieve all such suffering. Its action is quick and thorough. Use SNL until you are feeling well, then discontinue. Three to seven treatments will relieve you entirely. No matter how bad your condition, don't despair. SNL is unconditionally guaranteed.

Body heat and SNL form a fume that starts penetrating the congested organs at once. SNL is very powerful yet mild enough to put into the sorest tenderest ear.

* * * the life wrecking tortures and consequences of gonorrhoea have been completely relieved by SNL.

* * * SNL (Suffer No Longer) treatments have never failed one female trouble sufferer yet.

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 her medicinal preparation designated as SNL (Suffer No Longer) is a cure or remedy for various diseases and disorders of the female organs, including gonorrhoea, and constitutes a competent and effective treatment for such diseases and conditions.

PAR. 5. The respondent's foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's preparation is not a cure or remedy for various diseases and disorders of the female organs and has no therapeutic value in the treatment of any of such diseases and conditions. It has no value in the treatment of gonorrhoea. Respondent's preparation is made up of an indiscriminate combination of drugs which in the proportions used and method of use has no basis in medical science.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to her 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.

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.

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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 she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Cora Lee Wiley, an individual, 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 respondent's medicinal preparation designated as SNL (Suffer No Longer), or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparation constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of, gonorrhoea or any disease or disorder of the female organs.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

ELECTRO-HEALTH APPLIANCE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4501. Complaint, May 13, 1941—Decision, Nov. 2, 1942*

Where a corporation, engaged in the rental and sale and distribution of its "Electro-Health Short Wave Diathermy" device for home use; by means of advertisements in local daily papers and by local radio broadcasts, which, respectively, circulated and were heard in other States, and by advertising folders and other material mailed to prospective purchasers therein—

- (a) Represented that its said device might be used safely by the unskilled lay public in the treatment of self-diagnosed diseases and ailments by individual self-application in the home without professional supervision;
- (b) Represented that it was a safe, harmless, and effective means for the treatment of rheumatism in various forms in all parts of the body, and for arthritis, sinus, hay fever, colds, neuritis, kidney troubles, prostatitis, asthma, high blood pressure, sciatica, lumbago, poor circulation, pneumonia, liver complaints, insomnia, and numerous other acute and chronic diseases and conditions; and that its use would have no ill effects;

The facts being that use thereof by the unskilled lay public, under prescribed or customary conditions, does not constitute a competent treatment for any of the diseases or conditions claimed, or for any in which an acute inflammatory process is present; the device is not a safe or harmless means of treating self-diagnosed diseases or ailments, but, when improperly used may result in serious burns or other injuries, and, in certain conditions, may increase congestion, aggravate inflammation, and spread infection, or induce hemorrhage; may lead to ulceration and gangrene and necessitate amputation, and delay diagnosis and proper treatment of underlying diseases, with serious or even fatal consequences, diathermy not being safe without diagnosis by competent medical authority and prescription by such authority of method, frequency, and rate of application, and user's thorough instruction by a physician or trained technician in the use of the device; and

- (c) Failed to reveal facts material in the light of the representations therein made and consequences which might result from the use of the device under prescribed or usual conditions; and that it might be used safely only after competent medical authority had determined, as noted above, that diathermy was indicated, and prescribed method, rate, and frequency of application and user had received adequate instruction in use of the device;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said device possessed therapeutic values which it did not and that it might be used by the lay public with safety, thereby inducing purchase of the device by such public because of such belief:

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

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Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. A. McOuat, Mr. James I. Rooney, and Mr. William M. King 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 Electro-Health Appliance 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, Electro-Health Appliance Co., is a corporation, organized, existing, and doing business under and by virtue of the law of the State of California and having its office and principal place of business at 2709½ West Seventh Street, Los Angeles, Calif.

PAR. 2. The respondent is now and has been for more than 2 years last past engaged in the business of selling and renting a device intended for use in the treatment of various diseases and conditions of the human body, such device being designated as "Electro-Health Short Wave Diathermy." Respondent sells and rents said device to members of the public situated in various States of the United States and in the District of Columbia, and causes said device when sold or rented by it, to be transported from its aforesaid place of business in the State of California to the purchasers or lessees 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 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 respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said device by the United States mails and by various other means in commerce, as commerce is defined by the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its device, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements are 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 advertising literature, and by radio continuities, are the following:

In newspaper advertisements:

THE MAGIC OF RADIO

Short Wave Diathermy for Home

Treatment of Arthritis, Sinus, Asthma, Prostate, Neuritis, Poor Circulation, Bronchitis, Kidneys and many other ailments.

In a booklet entitled "Care of the Body with the Aid of Electro-Health Short Wave Diathermy":

ELECTRO-HEALTH SHORT WAVE DIATHERMY OFFERS Hope for Sufferers from Acute and Chronic Agonizing Diseases * * *

It has proved especially effective in the relief of suffering from inflammatory pains, such as arthritis, neuritis, neuralgia, rheumatism, lumbago, sciatica, gout, sinus, etc. And its results when properly used in respiratory troubles, such as bronchitis, asthma, hay fever, etc., are little less than remarkable. * * *

HOME SHORT WAVE TREATMENTS ENTIRELY SAFE.

The Electro-Health Short Wave Diathermy is sufficiently limited in power as to be safe to use in the home and yet have sufficient deep heating effect to obtain beneficial results. The Radio Wave length is definitely set, and is your assurance that it will have quick enough sensory effect on the outer layers of the skin to protect the interior tissues from harm or overheating.

Many specialists in the Electro-Therapy field believe that the high frequency currents have other beneficial results—but in considering it for your own use you can safely assume that it is no more harmful than any other variety of heat treatments. * * *

TREATMENTS AT HOME BENEFICIAL.

The treatments you can give to yourself with an Electro-Health Short Wave Diathermy usually produces the same heat effects like the professional instrument in the practitioners office, and it is available when your ailment starts, its immediate application may prevent further progress of disease. * * *

All representatives of the Electro-Health Short Wave Diathermy equipment are experienced, and able to be of great assistance to users in advice and suggestions for the best results. * * *

Many men of forty feel old. Often the cause is prostate trouble. * * * Prostate trouble usually responds readily to this form of treatment. * * * Painful Menses—and other inflammatory complaints of the Vaginal area usually respond to Radio Short Wave Therapy * * *

The relief to sinus sufferers by Short Wave Diathermy is unparalleled by any other method.

Head colds, toothache, earache, tonsillitis and other head conditions usually respond to Short Wave treatments.

Short Wave Diathermy is a Home Necessity * * *

* * * It's frequent use by each member of the family is very inexpensive assurance in building up resistance to infectious conditions * * *

* * * Short Wave Diathermy has an analgesic effect, in addition to other beneficial results, and it is entitled to your fullest confidence.

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* * * The uses of Short Wave Diathermy are varied and multiform. It should always be tried where benefit may be derived from it.

* * * it's improvement (chronic arthritis) by diathermy has taken place so often that it should be given a trial in practically all cases of this disease.

* * * Users have reported favorable results from this method in the treatment of: Abscesses, Asthma, Bronchitis, Chilbains, Female Disorders, High Blood Pressure, Kidney Troubles, Lumbago, Neuralgia, Pneumonia, Peritonitis, Pleurisy, Sciatica, Sprains, Singers Throat, Adhesions, Ears, Foot Ailments, Hay Fever, Arthritis, Boils, Common Colds, Furuncle, Gastritis, Insomnia, Liver Complaints, Laryngitis, Neuritis, Pelvic Disorders, Prostate, Rheumatism, Sinus, Tonsils, Sore Throat, Respiratory Difficulties, Menstrual Pains, Colonic Disorders.

In general it may safely be assumed that relief may be expected from the application of heat to many of the inflammatory ailments to which man is heir, and "Radio Short Wave" (Diathermy) is outstanding in this field of Physiotherapy.

By radio broadcast:

Today, science is employing radio waves—extremely short waves—to generate heat deep within the tissues. Heat to ease the pain, heat to increase the circulation of blood in the inflamed area, heat to help the blood carry off the poisons of infection, heat to overcome these deep seated inflammations and do away with soreness and swelling. This comparatively new invention—Electro-Health Short Wave Diathermy—has given the medical world a new kind of therapy and a most effective treatment for a great many common ills and discomforts. And this is important: **THIS NEW SHORT WAVE DIATHERMY TREATMENT HAS BEEN MEDICALLY APPROVED AND ADOPTED GENERALLY THROUGHOUT THE WORLD!** Of equal importance is this fact: Electro-Health Appliance Company, 2709 W. 7th, has perfected a safe short-wave diathermy unit for home use. It's so simple that anyone can use it, without professional supervision. This perfected Electro-Health Short Wave Diathermy unit is a virtual necessity for every home—a good health necessity that will bring a million dollars worth of relief and comfort to sufferers from common colds, sinus trouble, rheumatism, ear ache, hay fever and a hundred other similar complaints.

If you've ever suffered the discomfort of a common cold, sore throat, sinus trouble, or any one of a hundred or more common ailments, you'll be interested in this. Science has harnessed radio short waves to relieve and protect against these common conditions * * * and the Electro-Health Appliance Company has perfected a short wave unit so safe and simple in operation, it can be used in the home without medical supervision. Here's the way it works: The Electro-Health Short Wave Diathermy machine has two electrodes or pads which are applied to opposite sides of the body wherever the trouble is located. When the switch is turned on high frequency radio waves flow from one electrode right through the body tissues to be received by the opposite electrode. The short waves create heat deep within the tissues, soothing any pain and at the same time stimulating the circulation of blood in that particular area. This friendly fever, generated by short radio waves, directs and reinforces the body healing powers. Electro-Health Short Wave diathermy for the home is safe, simple and amazingly inexpensive.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out

herein, respondent has represented that its device or apparatus, advertised as Electro-Health Short Wave Diathermy, may safely be used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home without professional supervision; that said device is a scientific, safe, harmless and effective means and method for the treatment of the following diseases and pathologic conditions; rheumatism in its various forms in all parts of the body, arthritis, sinus, hay fever, colds, laryngitis, bronchitis, respiratory troubles, neuritis, kidney troubles, prostatitis, asthma, high blood pressure, sciatica, lumbago, poor circulation, pneumonia, liver complaints, insomnia, abscesses, gout, gastritis, pleurisy, constipation, colonic disorders, sprains, bruises and muscle soreness, chilbains and other foot ailments, bladder trouble, menstrual pains, female disorders, peritonitis, singers throat, adhesions, boils, furuncles, pelvic inflammations, neuralgia, tonsillitis, head colds, earache and toothache, and other acute and chronic diseases and conditions; that the use of said device will have no ill effects upon the user.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading.

Respondent's device is composed of a high frequency generator in a cabinet; the power to the circuit is furnished by a transformer and the output is inductively coupled and tuned with a variable condenser; and the power is transmitted to the user by two insulated rubber conductor pads covered with felt.

The application to the patient is made by placing the electrodes in such position that a heat-generating electric current will pass between the electrodes through the affected area, thus inducing heat in the tissues of the area to which applied.

The individual self-application of said device by the unskilled members of the public in the home, either under the conditions prescribed in said advertisements or under such conditions as are customary or usual, will not accomplish the results claimed by the respondent and is not a scientific, safe, harmless, or effective means or method to be used in the treatment of the ailments or conditions referred to in paragraph 4 herein or any other self-diagnosed diseases or ailments of the human body. Prerequisites of the safe and effective use of such device are (1) complete history and physical examination of the user to determine his physical condition, (2) competent diagnosis of the user's condition and the effects of the application of heat to the user, (3) definite conception of the underlying pathology, (4) administration by a skilled technician, (5) adequate safeguarding against injury or harm by the device, such as the prevention of burns and injury to

the tissues, (6) definite control of the frequency and extent of administration.

There are many diseases and conditions, and certain stages of other diseases and conditions, in which diathermy is contra-indicated, and in which its use will aggravate the disease or condition and be injurious to health.

By way of illustration, but not to the exclusion of other instances of injurious results, the indiscriminate use of said device may result in further swelling of inflamed tissues, thereby increasing the congestion of the inflamed part and the spreading of the inflammation to adjacent tissues, and allowing the absorption of toxin, when present, in conditions of acute inflammation of the nerves, such as neuritis, in acute inflammation of the muscles, such as lumbago, in acute inflammation of the joints, such as acute inflammatory arthritis, and in rheumatic pains.

The application of diathermy in conditions of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose, and throat, causing increased absorption of bacterial toxins.

Diathermy, when applied in the treatment of severe pains in the extremities in the presence of advanced blood-vessel changes in the legs or arms, may cause serious burns and may lead to gangrene and necessitate amputation of the legs or arms.

Application of diathermy to areas affected by malignant tumors may result in the stimulation of the growth of cancerous cells or in spreading the trouble to other tissues.

In those areas of the skin where the sense of heat has been lost due to injury or impairment of the peripheral nerves, the application of said device may result in tissue destruction and severe burns.

PAR. 6. The advertisements disseminated by respondent as aforesaid are also false in that they fail to reveal facts material in the light of the representations contained therein, or material with respect to consequences which may result from the use of said device, under the condition prescribed in said advertisements or under such conditions as are customary or usual, and fail to reveal that the use of said device may result in serious and irreparable injury to health.

Said advertisements are further false in that they also fail to conspicuously reveal that the device may be safely used only after a competent medical authority had determined, as a result of diagnosis, that diathermy is indicated, and has prescribed the frequency and amount of application of such diathermy treatments, and the user has been adequately instructed by a trained technician in the method of operating such device.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 13, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Electro-Health Appliance 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 said complaint (respondent not having filed any answer thereto), testimony and other evidence in support of 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, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Electro-Health Appliance Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, formerly having its office and principal place of business at 2709½ West Seventh Street, Los Angeles, Calif. For more than 1 year immediately preceding February 1941 it was engaged in the rental and in the sale and distribution of an electrical device or apparatus designated as "Electro-Health Short Wave Diathermy."

PAR. 2. Respondent's device or apparatus was offered for rental and for sale to members of the public for use in giving self-administered applications of short-wave diathermy in their homes. It is essentially a portable cabinet approximately 15 inches high, 14 inches wide, and $9\frac{3}{4}$ inches deep, which contains a transformer with tubes and electrical circuits for the generation of electrical short waves which are transmitted to the user by means of two insulated electrodes. The electrical energy necessary for the operation of this device is secured by attaching it to the usual domestic electrical circuits available in the user's home, and it has a power output of from 75 to 125 watts. When the electrodes are applied to the user's body and the device or apparatus put in operation, the passage of electrical short waves between the electrodes creates heat within the body tissues of the user because of their resistance to the passage of such electrical currents.

PAR. 3. In the course and conduct of the aforesaid business, respondent has caused advertisements to be inserted in the "Evening Herald and Express" and the "Los Angeles Examiner," daily newspapers published in Los Angeles, Calif., and having circulation in States other than California; has caused advertising continuities to be broadcast over radio station KFVD in Los Angeles, Calif., which broadcasts reach and may be received by radio receiving sets located in States other than California; and has caused copies of its various advertising folders and other material to be mailed to prospective purchasers in States other than California. Respondent, by means of the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, has thus disseminated and has caused the dissemination of false advertisements concerning its "Electro-Health Short Wave Diathermy" device or apparatus; and respondent, by various means, has also disseminated and has caused the dissemination of false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said device or apparatus in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and cause to be disseminated, as aforesaid, are the following:

In newspaper advertisements:

THE MAGIC OF RADIO

Short Wave Diathermy for Home Treatment of Arthritis, Sinus, Asthma, Prostate, Neuritis, Poor Circulation, Bronchitis, Kidneys, and many other ailments.

In a booklet furnished to those who answer respondent's advertisements and which is entitled "Care of the Body with the Aid of Electro-Health Short Wave Diathermy":

Electro-Health Short Wave Diathermy
OFFERS

Hope for Sufferers from Acute and Chronic Agonizing Diseases

* * * * *

It has proved especially effective in the relief of suffering from inflammatory pains such as arthritis, neuritis, neuralgia, rheumatism, lumbago, sciatica, gout, sinus, etc. And its results when properly used in respiratory troubles, such as bronchitis, asthma, hay fever, etc., are little less than remarkable.

HOME SHORT WAVE TREATMENTS ENTIRELY SAFE

The Electro-Health Short Wave Diathermy is sufficiently limited in power as to be safe to use in the home and yet have sufficient deep heating effect to obtain beneficial results. The Radio Wave length is definitely set, and is your assurance that it will have quick enough sensory effect on the outer layers of the skin to protect the interior tissues from harm or overheating.

MANY specialists in the Electro-Therapy field believe that the high frequency currents have other beneficial results—but in considering it for your own use you can safely assume that it is no more harmful than any other variety of heat treatments.

TREATMENT AT HOME BENEFICIAL

The treatments you can give to yourself with an Electro-Health Short Wave Diathermy usually produces the same heat effects like the professional instrument in the practitioners office, and it is available when your ailment starts, its immediate application may prevent further progress of the disease.

* * * * *

All representatives of the Electro-Health Short Wave Diathermy equipment are experienced, and able to be of great assistance to users in advice and suggestions for the best results.

* * * * *

Many men of forty feel old. Often the cause is prostate trouble. * * *

Prostate trouble usually responds readily to this form of treatment.
* * * Painful menses—and other inflammatory complaints of the Vaginal area usually respond to Radio Short Wave Therapy.

* * * * *

The relief of sinus sufferers by Short Wave Diathermy is unparalleled by any other method.

HEAD COLDS, TOOTHACHE, EARACHE, TONSILITIS, and other head conditions usually respond to Short Wave treatments.

SHORT WAVE DIATHERMY IS A HOME NECESSITY

* * * Its frequent use by each member of the family is very inexpensive assurance in building up resistance to infectious conditions.

* * * Short Wave Diathermy has an analgesic effect, in addition to other beneficial results, and it is entitled to your fullest confidence.

* * * * *

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Findings

* * * The uses of Short Wave Diathermy are varied and multiform. It should always be tried where benefit may be derived from it.

* * * its (chronic arthritis) improvement by diathermy has taken place so often that it should be given a trial in practically all cases of this disease.

* * * Users have reported favorable results from this method in the treatment of

Abscesses	Arthritis
Asthma	Boils
Bronchitis	Common Colds
Chilblains	Furuncle
Female Disorders	Gastritis
High Blood Pressure	Insomnia
Kidney Troubles	Liver Complaints
Lumbago	Laryngitis
Neuralgia	Neuritis
Pneumonia	Pelvic Disorders
Peritonitis	Prostate
Pleurisy	Rheumatism
Sciatica	Sinus
Sprains	Tonsils
Singers Throat	Sore Throat
Adhesions	Respiratory Difficulties
Ears	Menstrual Pains
Foot Ailments	Colonic Disorders
Hay Fever	

In general it may safely be assumed that relief may be expected from the application of heat to many of the inflammatory ailments to which man is heir, and "Radio Short Wave" (Diathermy) is outstanding in this field of Physiotherapy

By radio broadcasts:

Today, science is employing radio waves—extremely short waves—to generate heat deep within the tissues. Heat to ease the pain, heat to increase the circulation of blood in the inflamed area, heat to help the blood carry off the poisons of infection, heat to overcome these deep-seated inflammations and do away with soreness and swellings. This comparatively new invention—Electro-Health Short Wave Diathermy—has given the medical world a new kind of therapy and a most effective treatment for a great many common ills and discomforts. And this is important: **THIS NEW SHORT WAVE DIATHERMY TREATMENT HAS BEEN MEDICALLY APPROVED AND ADOPTED GENERALLY THROUGHOUT THE WORLD!** Of equal importance is this fact: Electro-Health Appliance Company, 2709 W. 7th, has perfected a safe short-wave diathermy unit for home use. It's so simple that any one can use it without professional supervision. This perfected Electro-Health Short Wave Diathermy unit is a virtual necessity for every home—a good health necessity that will bring a million dollars worth of relief and comfort to sufferers from common colds, sinus troubles, rheumatism, ear ache, hay fever, and a hundred other similar complaints.

* * * * *
If you've suffered the discomfort of a common cold, sore throat, sinus trouble,

or any one of a hundred or more common ailments, you'll be interested in this. Science has harnessed radio short wave to relieve and protest against these common conditions * * * and the Electro-Health Appliance Company has perfected a short wave unit so safe and simple in operation, it can be used in the home without medical supervision. Here's the way it works: The Electro-Health Short Wave Diathermy machine has two electrodes or pads which are applied to opposite sides of the body wherever the trouble is located. When the switch is turned on, high frequency radio waves flow from one electrode right through the body tissue to be received by the opposite electrode. The short waves create heat deep within the tissues, soothing any pain and at the same time stimulating the circulation of the blood in that particular area. This friendly fever, generated by short radio waves, directs and reinforces the body's healing powers. Electro-Health Short Wave Diathermy for the home is safe, simple and amazingly inexpensive.

PAR. 4. By the use of the foregoing representations, and others similar thereto but not specifically set out herein, respondent has represented that its device or apparatus designated as "Electro-Health Short Wave Diathermy" may be used safely by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home without professional supervision; that said device is a safe, harmless, and effective means and method for the treatment of rheumatism in its various forms in all parts of the body, arthritis, sinus, hay fever, colds, laryngitis, bronchitis, respiratory troubles, neuritis, kidney troubles, prostatitis, asthma, high blood pressure, sciatica, lumbago, poor circulation, pneumonia, liver complaints, insomnia, abscesses, gastritis, pleurisy, colonic disorders, chilblains, bladder trouble, menstrual pains, female disorders, peritonitis, singer's throat, sore throat, adhesions, boils, furuncles, pelvic inflammations, neuralgia, tonsillitis, earache, and other acute and chronic diseases and conditions; and that the use of said device would have no ill effects upon the user.

PAR. 5. When used by unskilled members of the public, either under the conditions prescribed by respondent or under such conditions as are customary or usual respondent's short wave diathermy device is not a competent treatment for any of the diseases or conditions set forth in the preceding paragraph, or for any disease or condition in which an acute inflammatory process is present, or where the application of heat may induce hemorrhage, or where the condition treated is merely a symptom of some underlying disease, or where the disease to be treated is accompanied by other conditions such as those stated and in which the use of short-wave diathermy is contraindicated.

Respondent's device is not a safe or harmless means of treating self-diagnosed diseases or ailments of the human body. It has the capacity to, and when improperly used may, result in serious burns

and other injuries to the user. When used to treat conditions involving inflammation such as but not limited to acute arthritis, acute bursitis, or sinus, respondent's device is likely to increase congestion, aggravate the inflammation, and spread infection to other tissues. When used to treat conditions such as but not limited to gastritis due ulcers, pelvic disorders, or menstrual difficulties, it may induce hemorrhage. Conditions such as but not limited to neuritis and neuralgia are frequently symptoms of some underlying disease and competent treatment requires a determination of and treatment of the disease itself rather than a treatment of the symptoms. The excessive application of short-wave diathermy for the treatment of pains in the arms and legs in the presence of advanced blood vessel changes may lead to ulceration and gangrene and necessitate amputation. Cancer of the spine and tuberculosis of the spine may evidence themselves by pain in the knees or other parts of the body, and pain in the joints may be a symptom of tuberculosis of the joints, cancer, syphilis, or other infectious processes, and attempts to treat local pain in such circumstances by the use of respondent's device may so delay diagnosis and proper treatment of the underlying disease as to result in serious or even fatal consequences. The use of respondent's device in an area where there is hardening of the arteries and poor circulation may result in severe burns and may result in thrombosis or thrombophlebitis. The ordinary layman is unable to diagnose diseases and even in conditions where short-wave diathermy might properly be used is unable to determine the method, rate, or frequency of application which would make the use of the device a proper treatment under the particular circumstances.

The use of diathermy is not safe unless and until competent medical authority has determined as a result of diagnosis that its use is indicated and has prescribed the method, frequency, and rate of application of diathermy treatments and the user has been thoroughly and adequately instructed by a physician or a trained technician in the use of the device.

PAR. 6. The aforesaid representations by respondent concerning the therapeutic value of its device are misleading and deceptive and constitute false advertisements. These representations are also false advertisements for the reason that they fail to reveal all the facts material in the light of the representations made and fail to reveal the consequences which may result from the use of the respondent's device under conditions prescribed in the advertisements or under such conditions as are customary or usual. The representations also constitute false advertisements in that they fail to reveal that respondent's device may safely be used only after a competent medical

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authority has determined as a result of diagnosis that the use of diathermy is indicated and has prescribed the method, frequency, and rate of application and the user has received adequate instruction in the use of the device.

PAR. 7. The use by respondent of the aforesaid false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's device possesses therapeutic values which it does not in fact possess and that such device may be indiscriminately used by the lay public with safety, and the tendency and capacity to cause such portion of the public to purchase respondent's device as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The aforesaid acts and practices of the 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, testimony and other evidence taken 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Electro-Health Appliance Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, or distribution of an electrical device or apparatus designated as "Electro-Health Short Wave Diathermy," or any other device or apparatus of substantially similar character, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly disseminating or causing to be disseminated, 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 concerning the electrical device or apparatus designated "Electro-Health Short Wave Diathermy," or disseminating or causing to be disseminated any advertisements, by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Fed-

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eral Trade Commission Act, of the aforesaid electrical device or apparatus, which advertisement:

1. Represents, directly or through inference, that said device or apparatus is safe or harmless.

2. Represents, directly or through inference, that respondent's device or apparatus constitutes a competent or effective treatment for rheumatism in its various forms, arthritis, sinus, hay fever, colds, laryngitis, bronchitis, respiratory troubles, neuritis, kidney troubles, prostatitis, asthma, high blood pressure, sciatica, lumbago, poor circulation, pneumonia, liver complaints, insomnia, abscesses, gastritis, pleurisy, colonic disorders, chilblains, bladder trouble, menstrual pains, female disorders, peritonitis, singer's throat, sore throat, adhesions, boils, furuncles, pelvic inflammation, neuralgia, tonsilitis, earache, or any other ailment or disorder of the human body, unless such advertisement is specifically limited to those cases in which no acute inflammatory process is involved and in which the application of heat is not likely to induce hemorrhage.

3. Fails to reveal clearly, conspicuously, and unequivocally that said device or apparatus is not safe to use unless and until a competent medical authority has determined as a result of diagnosis that the use of diathermy is indicated and has prescribed the method, frequency, and rate of application of such diathermy treatments and the user has been thoroughly and adequately instructed by a physician or trained technician in the use of such diathermy device or apparatus.

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
DI-FUNCTION 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 4666. Complaint, Jan. 8, 1942—Decision, Nov. 2, 1942

Where a corporation, engaged in the manufacture and sale and distribution of its "Di-Function" preparation for diabetes; by means of advertisements through the mails, in newspapers and periodicals of general circulation, and in circulars and other printed or written matter, which included reproductions of purported testimonials and which were distributed in commerce among various states and by radio broadcasts heard by listeners therein, and by other means—

- (a) Represented, directly or by implication, that its said "Di-Function" was an effective treatment which would cure sugar diabetes, revive the glands of the pancreas so that they would produce sufficient insulin for the body's needs, cure long-standing, severe cases of diabetes, and make possible the resumption of the regular diet, discontinuance of all medicines, and the enjoyment of a normal healthy life;

The facts being said preparation was of no therapeutic value in the treatment of any disease or condition; and

- (b) Failed to reveal facts material in the light of such representations and with respect to consequences which might result from the use of said preparation under usual or prescribed conditions, in that said advertisements failed to reveal that the only diabetic treatment recognized as competent consists of a regulated diet, with or without the supervised administration of insulin, following which a diabetic may live out his normal life; whereas, if induced by false advertisements to abandon such treatment or fail to take advantage thereof, his diabetic condition will become worse and his health and life be endangered;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that said statements were true, thereby inducing purchase of said preparation:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. John M. Russell and *Mr. Edw. W. Thomerson* 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 Di-Function Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that

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a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Di-Function Co., Inc., is a corporation, created, organized, and existing under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2233 North Main Street, Fort Worth, Tex.

Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling and distributing a preparation designated as "Di-Function" and advertised as a treatment for diabetes.

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

Among, and typical of, the false statements and representations contained in said advertisement, disseminated and caused to be disseminated, as aforesaid, are the following:

* * * Diabetes is caused, in the opinion of medical experts, by the failure of certain glands in the pancreas to do their normal work, which is the excretion of natural insulin. Some people say that these glands are dead or destroyed, and that the only way a diabetic can keep alive is to continue to furnish the body with the necessary insulin from the outside, by use of a needle. However, it is my opinion that these glands are not dead, but are merely lying dormant. For some reason, they have ceased to function, and need some food and stimulation to cause them to become active again. I believe that my medicine is this necessary element to these glands to make them become active again. They grow, under the influence of DI-FUNCTION, until they are again in a strong

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enough condition to produce the insulin which is necessary to the human body. At that time, diabetes is gone, and the sufferer is cured. * * *

DI-FUNCTION has, in a great many cases, been very effective in the treatment of SUGAR DIABETES. It is a liquid extract of plant juices, containing other beneficial medicinal ingredients. Those who have taken DI-FUNCTION, even those people having very severe cases of DIABETES, have been able to entirely eliminate the use of other medicines and to resume their normal diet. * * *

"For eleven years I had sugar diabetes. My complexion was sallow and pasty looking. I was nervous and had headaches and pains all over my body.

"I took 35 units of insulin every day for 11 years, until I heard of DI-FUNCTION and started taking it. In a month I was greatly improved—headaches and pains all gone—complexion clear and rosy.

"Now I don't take any kind of medicine, and I feel that Di-Function has cured me of sugar diabetes.

"(Signed) M. M. S."

Fort Worth, Tex. * * *

Those suffering from sugar diabetes will be interested in the following letter from R. S. Ratliff of Bruceville, Texas * * * "In 1931 my Doctor told me I had sugar diabetes * * * put me on strict diet and prescription. * * * This condition continued until December 1938 when I heard about Di-Function, which I took regularly for two months * * * gradually feeling better * * * Recent blood test showed no sugar and now I don't feel any symptoms of Diabetes * * * Thanks to Di-Function."

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 respondent's preparation, respondent represents, and has represented, directly and by implication, that its said preparation designated and advertised as "Di-Function" is an effective treatment which will cure sugar diabetes; that its use will revive the glands of the pancreas so that they will produce sufficient insulin for the body's needs; and that it will cure long-standing, severe cases of sugar diabetes and make possible the resumption of regular diet, the discontinuance of all medicines, and the enjoyment of a normally well and healthy life.

PAR. 4. 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 said preparation is not an effective treatment for sugar diabetes, and it will not cure such disease or condition. Said preparation will not revive the glands of the pancreas or have any therapeutic effect thereon. Said preparation will not cure long-standing cases of sugar diabetes and will not make possible the resumption by a diabetic person of a regular diet, the discontinuance of all medicines, or the enjoyment of a normally well and healthy life.

Said preparation is of no therapeutic value in the treatment of any disease or condition of the human body.

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 said advertisements are particularly false in that they fail to reveal that there is only one diabetic treatment which is accepted by the medical profession as competent for use in the treatment of sugar diabetes and that said treatment consists of a regulated diet, or a regulated diet and the supervised administration of insulin. If the accepted medical treatment 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 advertisements to abandon the accepted treatment or fail to take advantage thereof, his diabetic condition will become worse and as a result thereof his health and life will be endangered.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its said preparation has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statement and representations are true and to induce a substantial number of the purchasing public, because of said 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 January 8, 1942, issued, and thereafter served, its complaint in this proceeding charging the respondent, Di-Function Co., Inc., a corporation, with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 1, 1942, the respondent filed its answer to said complaint, in which answer it admitted all of the material allegations of fact set forth in said complaint to be true and

waived all intervening procedure and further hearing as to said facts. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and said 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, Di-Function Co., Inc., is a corporation, created, organized, and existing under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2233 North Main Street, Fort Worth, Tex.

Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing a preparation designated as "Di-Function" and advertised as a treatment for diabetes.

PAR. 2. The Commission finds that in the course and conduct of its said business the respondent has disseminated and is now disseminating, and has caused and is now causing, the dissemination of, false advertisements concerning its said preparation, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which the said broadcasts originate, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation. 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 various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among, and typical of, the false statements and representations contained in the advertisements disseminated and caused to be disseminated as above found, are the following:

* * * Diabetes is caused, in the opinion of medical experts, by the failure of certain glands in the pancreas to do their normal work, which is the excre-

tion of natural insulin. Some people say that these glands are dead or destroyed, and that the only way a diabetic can keep alive is to continue to furnish the body with necessary insulin from the outside, by use of a needle. However, it is my opinion that these glands are not dead, but merely lying dormant. For some reason, they have ceased to function, and need some food and stimulation to cause them to become active again. I believe that my medicine is this necessary element to these glands to make them become active again. They grow, under the influence of DI-FUNCTION, until they are again in a strong enough condition to produce the insulin which is necessary to the human body. At that time, diabetes is gone, and the sufferer is cured. * * *

DI-FUNCTION has, in a great many cases, been very effective in the treatment of SUGAR DIABETES. It is a liquid extract of plant juices, containing other beneficial medicinal ingredients. Those who have taken DI-FUNCTION, even those people having very severe cases of DIABETES, have been able to entirely eliminate the use of other medicines and to resume their normal diet. * * *

"For eleven years I had sugar diabetes. My complexion was sallow and pasty looking. I was nervous and had headaches and pains all over my body.

"I took 35 units of insulin every day for 11 years, until I heard of DI-FUNCTION and started taking it. In a month I was greatly improved—headaches and pains all gone—complexion clear and rosy.

"Now I don't take any kind of medicine, and I feel that Di-Function has cured me of sugar diabetes. .

“(Signed) M. M. S.”

Fort Worth, Tex. * * *

Those suffering from sugar diabetes will be interested in the following letter from R. S. Ratliff of Bruceville, Texas * * * “In 1931 my Doctor told me I had sugar diabetes * * * put me on strict diet and prescription. * * * This condition continued until December 1933 when I heard about Di-Function, which I took regularly for two months * * * gradually feeling better * * *. Recent blood test showed no sugar and now I don't feel any symptoms of Diabetes * * * Thanks to Di-Function.”

PAR. 3. The Commission finds that through the use of the statements and representations above set out, all of which purport to be descriptive of the therapeutic properties of respondent's preparation, the respondent represents, and has represented, directly and by implication, that its said preparation designated and advertised as “Di-Function” is an effective treatment which will cure sugar diabetes; that its use will revive the glands of the pancreas so that they will produce sufficient insulin for the body's needs; and that it will cure long-standing, severe cases of sugar diabetes and make possible the resumption of regular diet, the discontinuance of all medicines, and the enjoyment of a normally well and healthy life.

PAR. 4. The aforesaid statements and representations used and disseminated by the respondent as hereinabove found, are grossly exaggerated, false and misleading and said advertisements consti-

tute false advertisements within the meaning of the Federal Trade Commission Act. In truth and in fact, respondent's said preparation is not an effective treatment for sugar diabetes, and it will not cure such disease or condition. Said preparation will not revive the glands of the pancreas or have any therapeutic effect thereon. Said preparation will not cure long-standing cases of sugar diabetes and will not make possible the resumption by a diabetic person of a regular diet, the discontinuance of all medicines, or the enjoyment of a normally well and healthy life.

Said preparation is of no therapeutic value in the treatment of any disease or condition of the human body.

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 that they fail to reveal that the only diabetic treatment recognized as competent for use in the treatment of sugar diabetes consists of a regulated diet, or a regulated diet and the supervised administration of insulin. If the recognized treatment indicated 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 advertisements, to abandon the recognized treatment or to fail to take advantage thereof, his diabetic condition will become worse and as a result thereof his health and life will be endangered.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its said preparation has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial number of the purchasing public, because of said 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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Di-Function 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, or distribution of respondent's medicinal preparation designated "Di-Function," or any other preparation containing the same or similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. 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 constitutes a cure or an effective treatment for sugar diabetes; that the use of said preparation will revive the glands of the pancreas or enable them to produce sufficient insulin for the body's needs; that the use of said preparation will make it possible for one having sugar diabetes to discontinue dieting and the use of medicines, or enable one to enjoy a normally well and healthy life; or that said preparation is of any therapeutic value in the treatment of any disease or condition of the human body.

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF
THE GENERAL TIRE & RUBBER COMPANY

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

Docket 4608. Complaint, Oct. 7, 1941—Decision, Nov. 13, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of automobile tires; in advertising its "General Dual 8" and "General Dual 10" tires in newspapers, periodicals, and trade journals, and through radio continuities, circulars, posters, pamphlets, spot cards, and other advertising media—

(a) Represented directly and by implication that said tires were so constructed that an automobile equipped with either could be brought to a stop quicker on all types of road when traveling at a speed of 60 miles an hour in rain than an automobile equipped with any other tire traveling 50 miles an hour in dry weather; that they would stop a car 50 percent quicker than all other makes or brands of tires, regardless of the kind of road or weather conditions, and without skid, swerve, or tail spin; that they were America's quickest stopping tires; afforded year-round protection against skidding; and would stop straight every time;

The facts being that they would not accomplish such results, and said representations were grossly exaggerated, false, and misleading; and

(b) Represented that said tires were of "8-ply" and "10-ply" construction, through stamping or moulding on the side walls and imprinting on the labels and wrappers thereof in connection with the size and the word "General" the phrase "Dual 8" or "Dual 10," and through use of such terms in its advertising;

The facts being that tires in question were actually of 4-ply and 6-ply construction, and did not contain 8 or 10 plies, as understood by the public familiar with manufacturers' practice of moulding or stamping size and name on the side walls of tires, together with number of plies used in construction thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, and with effect of placing in the hands of unscrupulous dealers means whereby they might more easily mislead the purchasing public with respect to the actual number of plies contained in said tires, and with result that a portion of said public was induced to purchase its said tires:

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

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

Wise, Roetzel & Maxson, of Akron, 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 General Tire & 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, General Tire & Rubber Co., is a corporation, organized under the laws of the State of Ohio, with its principal place of business in the city of Akron, Ohio.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, among other products, of automobile tires, and in the sale and distribution thereof, in commerce, among and between the various States of the United States and the District of Columbia. Respondent has been and is now in substantial competition with other corporations, partnerships, and individuals likewise engaged in the interstate sale and distribution of automobile tires.

Respondent distributes its tires through distributors and retail dealers located in the various States of the United States and in the District of Columbia; and causes said tires when sold to be transported from its place of business located in the State of Ohio to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia.

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

PAR. 3. Among the tires manufactured, sold, and distributed by respondent, as aforesaid, are two automobile tires designated "General Dual 8" and "General Dual 10," respectively. In the furtherance of the sale and distribution of these two tires, respondent has been and is now engaged in the practice of falsely representing the character, quality, and performance ability of the aforesaid automobile tires through false, deceptive, and misleading statements and representations disseminated by advertisements inserted in newspapers, periodicals, and trade journals, and by radio continuities, circulars, posters, pamphlets, spot cards, and other advertising media.

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PAR. 4. Among and typical of such statements and representations disseminated as aforesaid are the following:

The new General Dual 8 gives you unequaled QUICK STOPPING ABILITY—stops your car quicker at 60 in the rain than ordinary tires stop it at 50 in Dry Weather;

General Dual 10's the amazing tire that stops quicker than any other tire and without skid, swerve or tail spin;

America's quickest stopping tires;

This completely new kind of tire stops you straight every time—in any weather—and 50% quicker;

Cuts normal stopping distance in half;

Year-round protection against skidding.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others of similar import and meaning, but not specifically set out herein, all of which purport to be descriptive of the quality and performance ability of its aforesaid automobile tires, respondent represents directly and by implication that said tires are so constructed, that an automobile equipped with either the "General Dual 8" or "General Dual 10" can be brought to a stop quicker on all types of road when traveling at a speed of 60 miles an hour in rain than an automobile equipped with any other tire traveling 50 miles an hour in dry weather; that said tires will stop a car 50 percent quicker than all other makes or brands of tires regardless of the kind of road or weather conditions and without skid, swerve, or tail spin; that said tires are America's quickest stopping tires; that they afford year-round protection against skidding and will stop straight every time.

PAR. 6. The foregoing statements and representations, and others similar thereto but not specifically set out herein, are grossly exaggerated, false and misleading. Said tires are not so constructed that an automobile equipped with respondent's "General Dual 8" tire or its "General Dual 10" tire, traveling at a speed of 60 miles an hour, in rain, can be brought to a stop quicker than a car equipped with any other make or brand of tires, traveling 50 miles an hour in dry weather. Said tires will not stop a car 50 percent quicker than all other makes or brands of tires under all weather conditions and on all types of roads, without skidding, swerving, or tail spin. Said tires are not America's quickest stopping tires under all conditions of road and weather. They do not afford year-round protection against skidding and they will not stop straight every time.

PAR. 7. There are among the competitors of respondent, as referred to in paragraph 2 hereof, other corporations, partnerships, and individuals engaged in the sale and distribution of automobile tires in

commerce who do not engage in the deceptive acts and practices hereinabove set forth.

PAR. 8. In addition to the aforesaid false, deceptive, and misleading statements and representations, disseminated by respondent as aforesaid, respondent is also falsely representing, in the manner and means hereinafter set forth, the quality, material, and type of construction of its aforesaid automobile tires.

Respondent's automobile tire "General Dual 8" is of "4-ply" construction. Respondent causes to be stamped or molded on the side walls thereof the size, the word "General" and, in connection therewith, the phrase "Dual 8"; but fails to have stamped or molded thereon the actual number of plies used in the construction thereof.

Respondent's automobile tire "General Dual 10" is of "6-ply" construction. Respondent causes to be stamped or molded on the side walls thereof the size, the word "General" and, in connection therewith, the phrase "Dual 10"; but fails to have stamped or molded thereon the actual number of plies used in the construction thereof.

The number of plies used in the construction of an automobile tire, is one of the factors contributing to its strength, durability, and wearing qualities, and it is also one of the factors usually taken into consideration by prospective purchasers in buying automobile tires. Prospective purchasers must rely upon the manufacturer to correctly advise the number of plies used in the construction of an automobile tire. Automobile tire manufacturers to meet this responsibility in addition to molding or stamping on the side walls of each tire, the size and name of such tire, have established the custom of also stamping or molding on the side walls of each tire the exact number of plies used in the construction of such tire; such as, for example: "4-ply," and "6-ply." Purchasers understand and rely upon such stampings and are guided thereby when purchasing tires.

The use of the phrase "Dual 8" and the phrase "Dual 10" stamped or molded on the side walls of the respective tire, as aforesaid, in the absence of any other stamping or molding designating the actual number of plies used in the construction of said tires serve as representations that said automobile tires are of "8-ply" and "10-ply" construction, respectively.

PAR. 9. The use by respondent of the foregoing false, misleading, and deceptive statements and representations, disseminated as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true; and the stamping or molding on the side walls of its automobile tires the phrase "Dual 8" and the phrase "Duel 10," respectively, without

also causing to be stamped or molded on the side walls of such tires the exact number of plies used in the construction thereof, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that that particular automobile tire, as the case may be, is of "8-ply" or "10-ply" construction; and to induce a substantial portion of the purchasing public because of such erroneous and mistaken beliefs to purchase respondent's aforesaid automobile tires "General Dual 8" and "General Dual 10," thus unfairly diverting trade to the respondent from its competitors, thereby causing substantial injury to competition in interstate commerce. Respondent thus supplies to and places in the hands of dealers, a means and instrumentality by which said dealers may mislead and deceive the purchasing public with respect to the actual number of plies in said tire.

PAR. 10. The aforesaid acts and practices of said respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 7, 1941, issued and subsequently served its complaint in this proceeding upon respondent, The General Tire & Rubber Co., 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 that act. On January 26, 1942, the respondent filed its answer admitting all of the material allegations of fact set forth in the complaint. Thereafter the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in the complaint and also averring certain additional facts, and authorizing the Commission to incorporate in its findings any additional facts so averred and to make such conclusions and issue such order with respect thereto as the Commission deems appropriate, in like manner and to the same extent as if such additional facts had been originally set forth in the complaint and had been originally charged as constituting unfair and deceptive acts and practices in commerce. Respondent's substitute answer further waived all hearing and trial of the issues, the filing of briefs, and the presentation of oral argument before the Commission. Thereafter this proceeding regularly came

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The General Tire & Rubber Co. (referred to in the complaint as General Tire & Rubber Co.), is a corporation organized under the laws of the State of Ohio, with its principal place of business in the city of Akron, Ohio.

PAR. 2. For more than 1 year prior to October 1941, respondent was engaged in the manufacture, among other products of automobile tires, and in the sale and distribution thereof in commerce among and between the various States of the United States and in the District of Columbia. Respondent distributed its tires through distributors and retail dealers located in the various States of the United States and in the District of Columbia, and caused said tires, when sold, to be transported from its place of business located in the State of Ohio to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Prior to the recent action of the United States Government restricting the sale of tires for passenger cars, respondent maintained 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. 3. Among the tires manufactured, sold, and distributed by respondent, as aforesaid, were two automobile tires designated "General Dual 8" and "General Dual 10," respectively. In the furtherance of the sale and distribution of those two types of tires, respondent has misrepresented the character, quality, and performance ability of the aforesaid automobile tires through deceptive and misleading statements and representations contained in advertisements inserted in newspapers, periodicals, and trade journals, and also contained in radio continuities, circulars, posters, pamphlets, spot cards, and other advertising media.

PAR. 4. Among and typical of such statements and representations disseminated as aforesaid are the following:

The new General Dual 8 gives you unequalled QUICK STOPPING ABILITY—Stops your car quicker at 60 in the rain than ordinary tires stop it at 50 in Dry Weather.

General Dual 10's the amazing tire that stops quicker than any other tire and without skid, swerve or tail spin.

America's quickest stopping tires.

This completely new kind of tire stops you straight every time—in any weather—and 50% quicker.

Cuts normal stopping distance in half.

Year-round protection against skidding.

Respondent's answer states that the aforesaid statements and representations were not disseminated subsequent to a date which was prior to the date of the issuance of the complaint. The date referred to by respondent was, however, according to the record herein, subsequent to the date upon which the investigation was instituted.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others of similar import and meaning not specifically set out herein, all of which purported to be descriptive of the quality and performance ability of its aforesaid automobile tires, respondent represented, directly and by implication, that said tires were so constructed that an automobile equipped with either the "General Dual 8" or "General Dual 10" could be brought to a stop quicker on all types of road when traveling at a speed of 60 miles an hour in rain than an automobile equipped with any other tire traveling 50 miles an hour in dry weather; that said tires would stop a car 50 percent quicker than all other makes or brands of tires, regardless of the kind of road or weather conditions, and without skid, swerve, or tail spin; that said tires were America's quickest stopping tires; and that they afforded year-round protection against skidding and would stop straight every time.

PAR. 6. The foregoing statements and representations, and others similar thereto but not specifically set out herein, were grossly exaggerated, false, and misleading. Said tires were not so constructed that an automobile equipped with respondent's "General Dual 8" tire or its "General Dual 10" tire, traveling at a speed of 60 miles an hour, in rain, could be brought to a stop quicker than a car equipped with any other make or brand of tires traveling 50 miles an hour in dry weather. Said tires would not stop a car 50 percent quicker than all other makes or brands of tires under all weather conditions and on all types of roads, without skidding, swerving, or tail spin. Said tires were not America's quickest stopping tires under all conditions of road and weather. They did not afford year-round protection against skidding and they would not stop straight every time.

PAR. 7. In addition to the statements and representations disseminated by respondent as aforesaid, respondent also represented, in the manner and means hereinafter set forth, the quality and type of construction of its aforesaid automobile tires.

Respondent's automobile tire "General Dual 8" is of "4-ply" construction. Respondent caused to be stamped or molded on the side walls and imprinted on the labels and wrappers thereof the size, the word "General," and, in connection therewith, the phrase "Dual 8;" but prior to November 11, 1941, respondent failed to have stamped or molded thereon, or imprinted or stamped on wrappers or labels thereof, the actual number of plies used in the construction thereof.

Respondent's automobile tire "General Dual 10" is of "6-ply" construction. Respondent caused to be stamped or molded on the side walls and imprinted on the labels and wrappers thereof the size, the word "General," and, in connection therewith, the phrase "Dual 10"; but prior to November 11, 1941, respondent failed to have stamped or molded thereon, or imprinted or stamped on wrappers or labels thereof, the actual number of plies used in the construction thereof.

Subsequent to November 1941, and until respondent was prohibited by the United States Government from manufacturing passenger car tires, respondent's "Dual 8" and "Dual 10" tires were stamped with the actual number of plies used in the construction thereof, and the wrappers and labels thereof also revealed the actual ply construction.

Respondent's answer admits that while it has not engaged in any national advertising of its "Dual 8" and "Dual 10" automobile tires for approximately 1 year last past, prior to that time, in some instances, its national advertisements contained statements revealing the fact that such tires were of four and six ply construction, respectively, and in other advertisements no mention was made of the ply construction, although the names "Dual 8" and "Dual 10" were used by respondent in its general advertising literature as descriptive trade names for the tires involved in this proceeding.

The number of plies used in the construction of an automobile tire is one of the factors contributing to its strength, durability, and wearing qualities, and it is also one of the factors usually taken into consideration by prospective purchasers in buying automobile tires. Prospective purchasers must rely upon the manufacturer to correctly advise the number of plies used in the construction of an automobile tire. Automobile tire manufacturers, to meet this responsibility, in addition to molding or stamping on the side walls of each tire the size and name of such tires, have established the custom of also stamping or molding on the side walls of each tire the exact number of plies used in the construction of such tire; such as, for example, "4-ply" and "6-ply." Purchasers understand and rely upon such stampings and are guided thereby when purchasing tires.

The Commission finds that the use of the phrase "Dual 8" and the phrase "Dual 10" stamped or molded on the side walls of the re-

spective tires and imprinted or stamped on the labels or wrappers thereof, in the absence of any other stamping, imprinting, or molding actually designating the number of plies used in the construction of said tires, constituted a representation to ultimate purchasers that said automobile tires were of "8-ply" and "10-ply" construction, respectively, when as a matter of fact such automobile tires were of 4-ply and 6-ply construction, respectively.

Similarly, the Commission finds that the use of the phrases "Dual 8" and "Dual 10" as descriptive names for its tires in advertising literature distributed by the respondent in which no statement was made that said tires were of 4-ply and 6-ply construction, respectively, constituted a representation to ultimate purchasers that such tires were of 8-ply and 10-ply construction. Respondent's use of the terms "Dual 8" and "Dual 10" to designate, describe, and refer to certain of its passenger automobile tires, without an accompanying disclosure as to the actual ply construction, placed in the hands of unscrupulous dealers the means and instrumentality by which such dealers might more easily mislead the purchasing public with respect to the actual number of plies in said tires.

PAR. 8. The use by the respondent of the misleading and deceptive statements and representations set out in paragraph four and disseminated as aforesaid had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and that said automobile tires had the quality and performance ability as represented by respondent; and the stamping or molding on the side walls of said automobile tires and the imprinting or stamping on the labels and wrappers thereof of the phrases "Dual 8" and "Dual 10," and the use by respondent of those phrases in its advertising literature, without clearly revealing in connection therewith the actual ply construction of the particular tire therein referred to, had the tendency and capacity to mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that that particular automobile tire, as the case may be, was of "8-ply" or "10-ply" construction. As a result of such mistaken and erroneous beliefs which were induced by the respondent's acts and practices herein detailed, a portion of the purchasing public has been induced to purchase respondent's passenger automobile tires.

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

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, The General Tire & Rubber Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its automobile tires in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that an automobile equipped with respondent's "General Dual 8" or "General Dual 10" tires can be brought to a stop quicker when traveling in rain at a speed of 60 miles an hour than an automobile equipped with any other make or brand of tires traveling in dry weather at 50 miles an hour; that said automobile tires will stop a car 50 percent quicker than all other makes or brands of tires without skid, swerve, or tail spin; or that said tires are America's quickest stopping tires, regardless of road or weather conditions, that they afford year-round protection against skidding, or that they will stop straight every time; and from making any other representations respecting the quality or performance ability of said automobile tires which are not in fact true.

2. Using the phrase "Dual 8" or "Dual 10" in any manner to describe or refer to respondent's said tires without clearly disclosing, in connection with such use, the actual number of plies used in the construction of the particular automobile tire referred to.

3. Representing, directly or through implication, that any of respondent's automobile tires contain more plies than is actually the fact.

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

IN THE MATTER OF

EUGENE RUSSELL JAFFE (ALIAS E. J. RUSSELL), TRADING AS STERLING SALES COMPANY AND CRAFTSMAN 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 4656. Complaint, Dec. 9, 1941—Decision, Nov. 13, 1942

Where an individual, engaged in competitive interstate sale and distribution of numerous articles of merchandise, including cameras, radios, comforters, and electric clocks—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes through including in circular letters sent to numerous people throughout the United States soliciting their aid in sale of his said goods, push cards and circulars explaining his merchandising plan, under which the number concealed in disk under feminine name selected by a customer determined the amount he paid, the person selecting feminine name corresponding with that concealed under card's large master seal received an electric clock, the three persons pushing certain "lucky numbers" received automatic pencils, and others received nothing; and the operator, responsible for sale of such chances, remission of proceeds, and distribution of merchandise to the winners, was compensated by an electric lamp; and thereby

Supplied to and placed in the hands of agents or distributors thus secured by him the means of conducting lotteries in the sale of his merchandise in accordance with such plans, under which the amount of money paid and the particular article, if any, received were determined wholly by lot or chance; contrary to an established public policy of the United States Government and in competition with those who were not willing to use any method of chance;

With result that many members of the public were attracted by said individual's sales plan and by the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of said competitors; and with tendency and capacity to divert substantial trade unfairly to him from 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.

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

Mr. J. V. Mishou and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Henry Junge and *Mr. Benjamin F. Morrison*, 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

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Trade Commission, having reason to believe that Eugene Russell Jaffe, alias E. J. Russell, an individual, trading as Sterling Sales Co. and Craftsman Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eugene Russell Jaffe, alias E. J. Russell, is an individual, trading and doing business under the names of Sterling Sales Co. and Craftsman Sales Co., with his office and principal place of business located at 775 West Jackson Boulevard, Chicago, Ill. Respondent, is now, and has been for several years last past, engaged in the sale and distribution of cameras, radios, comforters, and bedspreads; loungettes, sports jackets, and other men's and women's wearing apparel; floor and table lamps, pens and pencils, electric time tellers, clocks and watches; bill folds and carrying cases; tableware, kitchenware, electrical appliances, and other merchandise, 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 the various States of the United States other than Illinois, and in the District of Columbia. There is now, and has been for several years last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business, respondent, is and has been, in 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 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 consumers thereof. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to operators and to the purchasing public certain literature and instructions, including among other things, push cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming

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public. One of respondent's push cards bears 30 feminine names and 30 masculine names and, on the reverse side thereof, there appears ruled columns for writing in the name of the customer opposite the feminine or masculine name selected. Said push card has 60 partly perforated disks underneath which appears the printed words "push out with pencil." Printed upon each of said disks appears one of the aforesaid feminine or masculine names and concealed within each disk is a number which is disclosed only when the disk is pushed out or separated from the card. The push card also bears a large master seal and concealed within the master seal is one of the aforesaid feminine or masculine names appearing on the face of said card. The person selecting the feminine or masculine name corresponding to the one under the master seal receives his choice of a table or floor lamp. Three Eversharp pencils are also awarded as prizes in connection with the aforesaid push card. The push card bears the following legend or instructions:

(SEAL)

Holder of Lucky Name
Under Large Red Seal
Receives Choice of Any
TABLE or FLOOR LAMP
Shown On Circular
Numbers 1 to 29 Pay
Only Amount You Draw
Any Number Over 29
Pay Only 29¢
Write Your Name Opposite Name
You Select On Back Of Card
3 EXTRA WINNERS
Numbers 22-33-44
Each Receives * * *

A Genuine
EVERSHARP \$1.00
PENCIL

Another of respondent's sales plans consists of circulars, letters, advertising statements, and a push card. This push card is similar to one above described and it bears the following legend or instructions:

SONORA

Lucky Name
Under Large Red Seal
Receives Choice of
SONORA or AIRMASTER RADIO
Numbers 1 to 35 Pay Amount You Draw
Numbers Over 35 Pay Only 35c
3 EXTRA WINNERS
Numbers 22 33 44 Each
Receive A \$1.00 Wahl
Eversharp Pencil

(SEAL)

Sales of respondent's 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.

Respondent furnishes and has furnished various other push cards accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes and has furnished the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, 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 that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and thereby are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to 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 his said competitors who do not use the same or an equivalent method.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 9, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Eugene Russell Jaffe, alias E. J. Russell, an individual, trading as Sterling Sales Co. and as Craftsman Sales 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 that act. After the filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral arguments; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Eugene Russell Jaffe, who has also used the name E. J. Russell, is an individual, trading and doing business under the names Sterling Sales Co. and Craftsman Sales Co., with his office and principal place of business located at 775 West Jackson Boulevard, Chicago, Ill. Respondent is now and since February 1941, has been engaged in the sale and distribution of numerous articles of merchandise, including, among others, cameras, radios, comforters, bedspreads, lamps, pens, pencils, electric clocks and other electrical appliances, billfolds, tableware, kitchenware, and various articles of men's and women's wearing apparel.

PAR. 2. In the course and conduct of his business respondent causes and has caused his merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and at all times mentioned herein has been in substantial competition with other individuals, and with partnerships and corporations, engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the sale and distribution of his merchandise respondent furnishes to his agents and distributors 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 consumers thereof. The method or sales plan used by respondent is substantially as follows:

Respondent addresses to numerous members of the public located throughout the United States circular letters explaining respondent's plan of merchandising and soliciting the aid of such persons in selling merchandise, the names of the addressees being taken from general mailing lists. The volume of letters distributed by respondent is large, some six million letters having been distributed by him during the year 1941. Enclosed in each letter is an order blank, a circular illustrating certain articles of merchandise, and a device commonly known as a push card.

The push card contains 60 partially perforated disks, on the face of each of which is a feminine or masculine name. Concealed under each disk is a number. The card also bears a large master seal, and concealed under this master seal is a name which corresponds with one of the names appearing on the perforated disks. Persons pushing the disks pay varying amounts, the exact amount paid being determined by the number concealed under the particular disk pushed. For example, a person pushing a disk revealing the number "10" pays 10 cents. The maximum amount paid by anyone, however, is 29 cents. After all of the disks on the card have been pushed, the master seal is removed and the person who pushed the disk bearing the name corresponding with the name under the master seal receives an electric floor or table lamp. Persons pushing certain "lucky numbers," three in number, receive automatic pencils. The other persons pushing disks on the card receive nothing for their money. Whether persons pushing the disks receive an article of merchandise or nothing for the

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amount of money paid, and the particular article received, is thus determined wholly by lot or chance.

The push card bears the following legend explaining how the card is operated:

(SEAL)

Holder of Lucky Name

Under Large Red Seal

Receives Choice of Any

TABLE or FLOOR LAMP

• Shown On Circular

Numbers 1 to 29 Pay

Only Amount You Draw

Any Number Over 29

Pay Only 29¢

Write Your Name Opposite Name

You Select On Back Of Card

3 EXTRA WINNERS

Numbers 22-33-44

Each Receives * * *

A Genuine
EVERSHARP \$1.00
PENCIL

The total amount of money collected by the agent or distributor operating the card is \$14.95, which is remitted to respondent. The articles of merchandise to be awarded as prizes are then shipped by respondent to the agent, along with an additional electric lamp which is retained by the agent as his compensation for operating the card.

Respondent supplies to his agents and distributors various other push cards for use in the sale and distribution of his merchandise, but the sales plans or methods involved in the use of all of the cards are substantially the same as that described above, varying only in detail.

PAR. 5. The persons to whom respondent furnishes his push cards use such cards in selling and distributing respondent's merchandise in accordance with the sales plan described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise. The use by respondent of such sales plan or method in the sale of his merchandise and the sale of such merchandise by and through the use of such method is a practice of a sort which is contrary to an established public policy of the Government of the United States:

PAR. 6. The sale of merchandise to the purchasing public in the manner herein described involves a game of chance or the sale of a

chance to procure an order of merchandise at a price much less than the normal retail price thereof. Among the competitors of respondent referred to in paragraph 3 hereof are those who are unwilling to use the sales method herein described, 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 members of the public are attracted by the sales plan or method employed by respondent and by the element of chance involved therein, and such persons are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by those competitors of respondent who do not use such methods. Because of the element of chance involved in such method, the use thereof by respondent has the tendency and capacity to divert and has diverted substantial trade unfairly to respondent from his said 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 the complaint taken before a trial examiner of the Commission theretofore duly designated by it, 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Eugene Russell Jaffe, alias E. J. Russell, individually, and trading as Sterling Sales Co. and as Craftsman Sales Co., or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cameras, radios, comforters, bedspreads, lamps, pens, pencils, electric clocks or other electrical appliances, billfolds,

tableware, kitchenware, men's or women's wearing apparel, or any other merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of agents, distributors, dealers, members of the public, or others, push cards, pull cards, punchboards, or any other devices which are to be used or may be used in the sale or distribution of respondent's merchandise or any 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 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

NATHANIEL FRIEDMAN, TRADING AS CONSUMER'S
RESEARCH SERVICE AND CONSUMER'S REPORT
SERVICE

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

Docket 4734. Complaint, Mar. 17, 1942—Decision, Nov. 17, 1942

Where an individual, engaged in compiling and publishing, and in interstate sale and distribution to automobile dealers and the public, of certain publications—

- (a) Made use of trade names "Consumer's Research Service" and "Consumer's Report Service" in conduct of his business and displayed the same in and on the publications in question; and made use of the names "Consumer's Research Reporter" and "Consumer's Automobile Reporter" to designate such publications in and on the publications themselves and in referring to them in circular letters addressed to automobile dealers;

Notwithstanding the fact he was at no time connected with "Consumers' Research, Inc.," well-known non-profit corporation of Washington, N. J., or its monthly "Consumers' Research Bulletin" which, well-known to a large portion of the purchasing public, is regarded as a source of accurate and unblased expert opinion with respect to the commodities covered by it;

- (b) Represented that he was an automotive expert or engineer and qualified to render authoritative opinions on the merits of automobiles, and that he maintained a staff of experts or engineers, through references thereto in introductions to said publications, and through statements in aforesaid circular letters;

The facts being that he had no training or experience which would qualify him as such an expert or engineer or enable him to render authoritative opinions; and had no staff of, and did not consult with, persons who could qualify in such capacity, the garage mechanics of whom he made occasional inquiries with respect to the mechanical features or performance of various makes of automobiles being in no wise expert on the subject;

- (c) Represented that the information given in his publications was impartial and that it was based upon results obtained from nation-wide polls of automobile owners or users, through statements in said pamphlets and circular letters;

The facts being that purported information contained therein was not impartial in that publications in question were prepared with the view of portraying certain makes of automobiles in a more favorable light than others, apparently to serve as sales aids to dealers handling those cars, toward whom almost exclusively his sales efforts were directed; and he did not in any manner conduct polls among car owners or users; and

- (d) Represented that his publications were copyrighted and "Dedicated to the Service of the People" through statements to that effect in or on them;

The facts being the publications were not copyrighted, were compiled, published, and sold by him as a commercial enterprise and solely for profit, and were in no way "dedicated to the service of the public";

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With tendency and capacity of misleading and deceiving a substantial number of automobile dealers and members of the purchasing public with respect to said business and the publications in question, thereby causing said public's purchase of the publications 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. James A. Purcell*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Mr. Isaac S. Friedman, 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 Nathaniel Friedman, of Chicago, Ill., 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, Nathaniel Friedman, is an individual, trading and doing business under the names of "Consumer's Research Service" and "Consumer's Report Service." His office and principal place of business has been located, since about July 1, 1940, at 4305 North Keeler Avenue, Chicago, Ill., and prior to that time was located at 223 West Jackson Boulevard, Chicago, Ill.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of compiling and publishing, and selling and distributing in commerce as herein set out, certain publications known as "Consumer's Research Reporter, 1940 Report on Automobile Values" and "Consumer's Automobile Reporter, 1941 Report on Automobile Values." Said publications purport to supply information with respect to the relative merits of various makes of automobiles. In the course and conduct of his business respondent has sold the two said publications to various automobile dealers and to members of the general public, and caused them, when sold, to be transported from his aforesaid places 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 has maintained a course of trade in said publications in commerce among and between the various States of the United States, and in the District of Columbia.

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PAR. 3. In respondent's said "1940 Report on Automobile Values" the following statements appear:

Published by
Consumer's Research Service

Dedicated to the Service of the Public
Consumer's Research

The Consumer's Research Service was organized to facilitate the distribution of knowledge regarding consumers' goods.

This service furnishes accurate, usable and authoritative information on the comparative values of competing products in their respective fields.

Observations, opinions and conclusions contained herein are based upon a three point survey of the field covered in each particular volume, i. e.

1. Actual mechanical specifications obtained from the manufacturer of the product.

2. Nation-wide vote on preference and popularity.

3. The Editor and Engineering staffs' own opinion based on No. 1 and No. 2 above.

It seems only natural that car buyers would have some clear idea as to the characteristics most desired.*

*Facts upon which this Brochure is based were obtained from a questionnaire answered by thousands of car owners.

We base our conclusion on two factors, namely:

1. That which the public likes and demands.

2. The observations of our staff of auto engineers.

Copyright, 1939

PAR. 4. In respondent's said "1941 Report on Automobile Values," the following statements appear:

Published by
Consumer's Report Service

Consumer's Automobile Reporter is published to facilitate the distribution of knowledge regarding this phase of consumers' goods.

The book furnishes accurate, usable, authoritative information on the comparative values of competing makes in their respective price fields.

Observations, opinions, and conclusions contained herein are based on a three point survey of the field covered in this volume, i. e.

1. Actual mechanical specifications obtained from the manufacturer.

2. Nation-wide vote on preference and popularity.

3. The Editor and Engineering staffs' own opinion based on No. 1 and No. 2 above.

It seems only natural that car buyers would have some clear ideas as to the characteristics most desired.*

* Facts upon which this Brochure is based were obtained from a questionnaire answered by thousands of car owners.

We base our conclusions on two factors, namely:

1. That which the public likes and demands.

2. The observations of our staff of auto engineers.

This is an impartial report.

Copyright, 1940

PAR. 5. By reference to the opinion of "the Editor and Engineering staff" and "the observations of our staff of auto engineers" respondent has represented that he, being the editor of said publications, is so qualified by experience and education that his opinion is of value, that the publisher maintains a similarly qualified staff of engineers or automotive engineers, and that their valuable and authoritative opinions are reflected in the contents of said publications.

By the statement in the "1940 Report" that the publication is dedicated to the public respondent has represented that the information and conclusions contained therein are impartially given. Respondent has also represented himself as "Independent and Qualified" in such matters in circular letters sent to prospective purchasers of said publications.

PAR. 6. The aforesaid statements and representations are misleading and untrue. In truth and in fact the business of the respondent was not dedicated to the service of the public, nor were his publications issued to facilitate the distribution of knowledge regarding automobiles. The enterprise was created for his own individual profit, which was expected to accrue from the sale of the said publications. The information and opinions contained in said publications were not impartial, and were so set forth as to most favorably present "Plymouth," "De Soto," and "Chrysler" automobiles made by the Chrysler Corporation. Respondent at no time conducted any nationwide vote on public preference or popularity, or sent out any questionnaire to car owners. The respondent has no education or experience which qualifies him to express any opinion of value with respect to automobiles, and he at no time maintained any staff of engineers or research workers. The said publications were not covered by copyrights.

Respondent's publications were intended to be, and were, sold almost exclusively to agents and distributors of the various automobiles manufactured by the Chrysler Corporation as aids in selling said automobiles.

PAR. 7. For more than 7 years last past a nonprofit corporation, organized under the laws of the State of New Jersey, known as Consumers' Research, Inc., and having a principal place of business at Washington, N. J., has been engaged in the dissemination of information regarding the characteristics and merits of a large number of commodities, including automobiles, by means of a monthly publication known as "Consumers' Research Bulletin." This publication is distributed to members of the general public who subscribe therefor, and certain issues are available to nonsubscribers. This corporation, and its said publication, are well known to a large portion of the

purchasing public, by whom the said publication is regarded as a source of accurate and unbiased expert opinion with respect to the characteristics and merits of a large number of articles, including automobiles. Respondent is in no way connected with Consumers' Research, Inc., or its publication, "Consumers' Research Bulletin."

PAR. 8. The use by respondent of the statements and representations set forth in paragraphs 3 and 4 hereof, has had the tendency and capacity to confuse and mislead readers and prospective purchasers of the said publications into the erroneous and mistaken belief that such statements and representations are true and to induce the purchase of said publications on account thereof.

The use by respondent of the name "Consumer's Research Reporter" and "Consumer's Automobile Reporter" for his said publications and his use of the trade names "Consumer's Research Service" and "Consumer's Report Service," have had the tendency and capacity to confuse and mislead readers of said publications and prospective purchasers thereof into the erroneous and mistaken belief that said publications were in fact compiled and published by Consumers' Research, Inc., of Washington, N. J., and to induce the purchase of said publications on account thereof.

PAR. 9. The aforesaid acts and practices of respondent have the effect of placing in the hands of automobile dealers who purchase said publications for use in connection with the sale of their automobiles to the public, means and instrumentalities whereby they may, knowingly or otherwise, deceive the purchasing public in the particulars aforesaid.

PAR. 10. 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 17, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Nathaniel Friedman, an individual, trading and doing business under the names Consumer's Research Service and Consumer's Report Service, charging him 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 the attorney for the Commission and in opposition thereto by the attorney for the respondent, before a trial examiner of the

Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (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, Nathaniel Friedman, is an individual, who, during the period from July 1939, to February 1941, was engaged, under the trade names Consumer's Research Service and Consumer's Report Service, in compiling and publishing certain publications designated by him as "Consumer's Research Reporter" and "Consumer's Automobile Reporter," and in the sale and distribution of such publications to automobile dealers and the public. The publications purported to supply information with respect to the relative merits of various makes of automobiles. At one time respondent carried on his business operations from his residence, which was located at 4305 North Keeler Avenue, Chicago, Ill., but subsequently respondent had a mailing address at 223 West Jackson Boulevard, Chicago, Ill.

PAR. 2. In the course and conduct of his business respondent caused his publications, when sold, to be transported from his places 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. During the entire period of time mentioned above, respondent maintained a course of trade in his publications in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's first publication, a pamphlet designated by him as "Consumer's Research Reporter" and which bore the further title of "1940 Report on Automobile Values," contained an introduction which read in part as follows:

The Consumer's Research Service was organized to facilitate the distribution of knowledge regarding Consumer's goods. This service furnishes accurate, usable, authoritative information on the comparative values of competing products in their respective fields. Observations, opinions, and conclu-

sions contained herein are based on a three point survey of the field covered in each particular volume, i. e.

1. Actual mechanical specifications obtained from the manufacturer of the product.
2. Nation wide vote on preference and popularity.
3. The Editor and Engineering staffs own opinion based on No. 1 and No. 2 above.

* * * * *

Now what features are these that stand out as valuable assets and as essential items to look for? We base our conclusion on two factors namely:

1. That which the public likes and demands.
2. The observations of our staff of auto engineers.

* * * * *

Facts upon which this Brochure is based were obtained from a questionnaire answered by thousands of car owners.

On the front cover of the pamphlet there also appeared the statement: "Dedicated to the Service of the Public," and on the inside page of the cover, the legend "Published by Consumer's Research Service, An Independent Organization * * * Copyright, 1939." The most significant part of the pamphlet was a chart or table setting forth some 21 points or features with respect to the construction of automobiles and purporting to give the rating of some eighteen automobiles of various makes, the rating of each make of car being determined by the number of the 21 listed features possessed by it.

The second and last of respondent's publications was issued about a year after the 1940 pamphlet, and was in substance the same as the first pamphlet except that it was for 1941 and was entitled "Consumer's Automobile Reporter" instead of "Consumer's Research Reporter." Also, the legend, "Dedicated to the Service of the Public" was omitted from the front cover.

In soliciting the sale of his 1941 pamphlets respondent addressed numerous circular letters to automobile dealers throughout the United States, which read in part as follows:

Please assume for the moment that you have at your beck and call a group of automotive specialists and engineers, who receive and analyze all the statistical figures covering the NEW 1941 car models.

In addition to this, also assume that they receive and study almost all the auto and engine figures and data that is available, against which they check their own independent conclusions and opinions, so as to produce a definite, IMPARTIAL opinion as to which car offers the best buy for the money.

Would you pay this group 2½ cents to talk to and convince one of your prospects that the car you are selling is not only the best buy in its field, but it has features and values that will compare it favorably with cars selling for almost twice the price?

To actually employ such a staff would entail great expense. However, through the Consumer's Report Service you can profit from the experience and knowledge of just such a group of automobile specialists, at a cost that is insignificant.

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Think what it would mean to have the Consumer's Automobile Reports at your command. They are convincing, logical, and full of true and accurate information, information that shoves aside sales resistance and results in more and still more car sales.

PAR. 4. Through the use of the statements and legends set forth above and others of a similar nature, respondent represented to automobile dealers and the public, directly or by implication, that he was an automotive expert and was qualified to render authoritative opinions on the merits of automobiles, and that he maintained in connection with his business a staff of experts or engineers who likewise were qualified to render such opinions; that respondent's publications were dedicated to the service of the public; that the purported information set forth in his publications was impartial; that such information was based in part upon results obtained from nation-wide polls of automobile owners; and that his publications were copyrighted.

PAR. 5. The Commission finds that there was no basis in fact for these representations. Respondent has had no training or experience which would qualify him as an automotive expert or engineer, or enable him to render authoritative opinions with respect to automobiles. No staff of experts or engineers was maintained by respondent, nor did he consult with persons who could qualify in that capacity. Inquiries were occasionally made by respondent of garage mechanics with respect to the mechanical features or the performance of various makes of automobiles, but such persons were in no wise experts on the subject. Respondent's publications were compiled, published, and sold by him as a commercial enterprise solely, for profit, and were in no way dedicated to the service of the public.

Nor was the purported information set forth in respondent's publications impartial, as it appears from the evidence that respondent prepared the publications with the view of portraying certain makes of automobiles in a more favorable light than other makes. Apparently it was respondent's purpose to prepare his pamphlets in such a manner that they would serve as sales aids to automobile dealers handling these particular makes of cars, and it was toward these dealers almost exclusively that respondent directed his efforts to sell his pamphlets. No questionnaires were sent by respondent to car owners, nor did respondent in any other manner conduct polls among owners or users of automobiles. Neither of respondent's publications was covered by copyright.

PAR. 6. The Commission further finds that the use by respondent of the trade names "Consumer's Research Service" and "Consumer's Report Service," and the use of the names "Consumer's Research Reporter" and "Consumer's Automobile Reporter" to designate and

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Order

describe his publications, was misleading to dealers and the purchasing public in that such names closely resemble the name of "Consumers' Research, Inc.," a nonprofit corporation organized under the laws of the State of N. J. and having its principal place of business in Washington, N. J. For a number of years this corporation has been engaged in the dissemination of information regarding the characteristics and merits of a large number of commodities, including automobiles, such information being disseminated by means of a monthly publication known as "Consumers' Research Bulletin." This publication is distributed to members of the general public who subscribe therefor, and certain issues are available to nonsubscribers as well. The corporation and its publication are well known to a large portion of the purchasing public, and the publication is regarded by the public as a source of accurate and unbiased expert opinion with respect to the characteristics and merits of the commodities covered by it. Respondent has not at any time been connected with Consumers' Research, Inc., or its publication.

PAR. 7. The use by respondent of the misleading and deceptive representations referred to herein, including the use of the aforesaid trade names and of the aforesaid titles for respondent's publications, had the tendency and capacity to mislead and deceive a substantial number of automobile dealers and members of the purchasing public with respect to the nature and identity of respondent's business, and with respect to the nature, origin, value, authenticity, and reliability of respondent's publications, and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondent's publications as a result of the erroneous and mistaken belief 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 in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, 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, Nathaniel Friedman, individually, and trading as Consumer's Research Service and as Consumer's Report Service, or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's publications designated "Consumer's Research Reporter" and "Consumer's Automobile Reporter," or any other publication of substantially similar character, do forthwith cease and desist from:

1. Using the word "Consumer" or "Consumers" as a part of respondent's trade name or as a part of the name or title of respondent's publications, or otherwise representing, directly or by implication, that respondent has any connection with the corporation known as Consumers' Research, Inc., of Washington, N. J., or that respondent's publications are the publications of said corporation.

2. Representing, directly or by implication:

(a) That respondent is an automotive expert or engineer, or that he is qualified to render authoritative opinions on the merits of automobiles.

(b) That respondent maintains any staff of experts or engineers in connection with his business.

(c) That the information given in respondent's publications is impartial.

(d) That said information is based in whole or in part upon results obtained from polls of automobile owners or users.

(e) That said publications are copyrighted.

(f) That said publications are "dedicated to the service of the public," or that respondent's business is anything other than a commercial enterprise.

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
NEW YORK HANDKERCHIEF 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 4727. Complaint, Mar. 11, 1942—Decision, Nov. 30, 1942

Where a corporation, engaged at its place of business in Chicago, Ill., in the manufacture and interstate sale and distribution of handkerchiefs to, principally, jobbers and retailers—

- (a) Represented that certain of its said products were made in and imported from Ireland, or were made in the United States from materials imported from Ireland, through use of word "Erin" on paper wrappers enclosing the boxes in which it packed said brand in 5 dozen quantities, together with depictions of a harp and shamrocks superimposed upon a background of traditional Irish green with "Made in U. S. A." at the bottom of the wrapper and in much smaller type; and through use of similar legends and depictions upon a green paper band which usually enclosed each dozen or half-dozen handkerchiefs within the box; and, occasionally, through use of said brand name upon a green sticker with depiction of a harp attached to top handkerchief of a lot in lieu of a band; and
- (b) Represented further that its said products were linen, through use on such wrappers, bands, and stickers of legend "Soft Linen Finish";

Notwithstanding the fact that the handkerchiefs thus branded were not made from linen of any kind, but were composed entirely of cotton; and were not imported from Ireland or made of materials imported from Ireland, long famous throughout the United States for its linen products, which are preferred by a substantial portion of the purchasing public to those produced elsewhere;

With tendency and capacity to mislead and deceive a substantial number of dealer and consumer purchasers, and thereby to cause them to purchase substantial quantities of said handkerchiefs; and with effect of placing in the hands of uninformed or unscrupulous dealers a means by which they might mislead and deceive the public;

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

As respects the alleged false representation by a handkerchief manufacturer that its products were made in Ireland or of material from Ireland through use of word "Erin" as brand name on labels and wrappers thereof, together with depiction of shamrocks: Use by said manufacturer of legend "Made in U. S. A." was not sufficient, as contended, to prevent deception of the public with respect to the origin of such handkerchiefs, entirely aside from the fact that such legend was branded in much smaller and less conspicuous type than the other words and would usually escape the attention of the purchaser.

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As respects alleged false representation by a handkerchief manufacturer that its handkerchiefs were linen through use of word "linen" on attached brands and labels: The use of the word "finish" in such legends as "Soft Linen Finish" and "Linen Finish" was not sufficient, as contended by the manufacturer, to apprise the public that the reference was to the finish rather than to the actual composition of the handkerchiefs, in view of the evidence; there being, moreover, serious doubt whether terms "Soft Linen Finish" and "Linen Finish" are recognized at all in the trade.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson 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 New York Handkerchief Manufacturing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, New York Handkerchief Manufacturing Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1021 West Adams Street, Chicago, Ill.

PAR. 2. The respondent is now, and for some time last past has been, engaged in the manufacture of handkerchiefs 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 its said place of business in the State of Illinois to jobbers, retailers, 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 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 said business in said commerce, as aforesaid, respondent offers for sale and sells its said product to jobbers and retailers for resale to the general public under the trade name "ERIN." Said product, when sold by the respondent,

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is packed in a wrapper which bears, among others imprinted thereon, the following statement:

ERIN

(Picturization of a harp)

Men's Handkerchiefs

Softest Linen Finish

Linen Finish

ERIN

ERIN

Men's Handkerchiefs

Said statement and said picturization of a harp appear in gold on a background of traditional Irish green.

On certain of the handkerchiefs packaged in said wrappers respondent places a wrapper upon which appears the following statement, accompanied by a picturization of a harp, in gold on a background of traditional Irish green:

ERIN

Handkerchiefs

Soft

Linen Finish

Through the use of the word "ERIN" as a trade name for and on said handkerchiefs and the wrapper in which they are packaged, the picturization of a harp and the background of traditional Irish green, the respondent represents and implies that said handkerchiefs are manufactured in and imported from Ireland. Through the statements "Soft Linen Finish," "Linen Finish," used in connection with the word "ERIN," the picturization of a harp and a background of green as aforesaid, respondent represents and implies that said handkerchiefs are manufactured from linen produced in and imported from Ireland. Through the use of the statements "Soft Linen Finish," "Linen Finish" alone respondent represents that said handkerchiefs are composed in whole or substantially in part of linen.

PAR. 4. In truth and in fact respondent's said handkerchiefs are not manufactured in and imported from Ireland. Said handkerchiefs are not manufactured from linen produced in Ireland or from linen at all, but are composed wholly of cotton and contain no linen whatsoever. Said handkerchiefs are manufactured in the United States at respondent's place of business in Chicago, Ill.

PAR. 5. The word "ERIN" has long been associated by a substantial portion of the purchasing public with the country Ireland, and through long usage has become synonymous therewith, and when used as hereinabove alleged indicates to a substantial portion of the purchasing public a product of Irish origin or a product made from materials of Irish origin. Ireland has long been famous throughout

the United States for the excellent quality of its linen products and a substantial portion of the purchasing public prefers linens produced in Ireland to those produced elsewhere. Handkerchiefs manufactured from linen are preferred by a substantial portion of the purchasing public to those manufactured from cotton.

PAR. 6. The aforesaid acts, practices, and methods of respondent have had and now have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said products are manufactured from Irish linen in and imported from Ireland, or manufactured in the United States from linen imported from Ireland, and that said products are composed in whole or substantial part of linen, and cause jobbers, retailers, and other members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products to the injury of the public.

PAR. 7. The aforesaid acts, practices, and methods of respondent place in the hands of jobbers and retailers purchasing for resale a means and instrumentality by and through which such jobbers and retailers may mislead and deceive the purchasing public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 11, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, New York Handkerchief Manufacturing Co., 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 the attorney for the Commission and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon

the evidence, and brief in support of the complaint (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, New York Handkerchief Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1021 West Adams Street, Chicago, Ill. Respondent, is now and for a number of years last past, has been engaged in the manufacture, sale, and distribution of handkerchiefs.

PAR. 2. In the course and conduct of its business respondent causes and has caused its handkerchiefs, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof, principally jobbers and retail dealers, located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its handkerchiefs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the various brands or lines of handkerchiefs manufactured and sold by respondent is a brand designated by respondent as "Erin." These handkerchiefs are packed 5 dozen to a box, and each box is wrapped in a paper wrapper on which there appears, in large type, the following:

E R I N
White Bleached
Mens
HANDKERCHIEFS
Soft Linen Finish

In connection with this lettering there also appear picturizations of a harp and shamrocks, the national flower of Ireland, all being superimposed upon a background of traditional Irish green. At the bottom of the wrapper, and in much smaller type than the other legends, is the legend "Made in U. S. A."

Around each dozen or half-dozen handkerchiefs within the box is usually placed a paper band which, like the outside covering of the package, is green in color, and which bears substantially the same legends, together with the picturization of a harp. Occasion-

ally, instead of using this band, respondent places on the top handkerchief in the dozen or half-dozen lot a sticker which reads:

E R I N
M
e
n
s
HANKERCHIEFS
Soft
Linen Finish

This sticker is also green in color and bears, along with the lettering thereon, the picturization of a harp.

PAR. 4. The name "Erin" has long been associated by a substantial portion of the purchasing public with the country Ireland, and is understood by such portion of the public as being somewhat synonymous with the name "Ireland." The Commission finds, therefore, that the use of the word by respondent to designate and describe its handkerchiefs constitutes a representation that such handkerchiefs are manufactured in and imported from Ireland, or that they are manufactured in the United States from materials imported from Ireland. The effect of the use of the word "Erin" is accentuated through the picturizations of the harp and shamrocks, and through the use of the green background.

The Commission finds, further, that through the use of the word "Linen" in the legends "Soft Linen Finish" and "Linen Finish," respondent represents and implies that its handkerchiefs are made of linen.

PAR. 5. The handkerchiefs so designated and described by respondent are not in fact made from linen of any kind, but are composed entirely of cotton. Neither the handkerchiefs nor the materials of which they are made are imported from Ireland. The handkerchiefs are manufactured at respondent's place of business in Chicago, Ill., from cotton fabric obtained in the United States.

PAR. 6. Ireland has long been famous throughout the United States for its linen products, and a substantial portion of the purchasing public prefers linens produced in Ireland to those produced elsewhere. Handkerchiefs made of linen are preferred by a substantial portion of the public to those made of cotton.

PAR. 7. It is insisted by respondent that the use on its wrappers and bands of the legend "Made in U. S. A." is sufficient to prevent any deception of the public with respect to the origin of its handkerchiefs. Aside from the fact, however, that this legend is printed in much smaller and less conspicuous type than the other words appearing on the wrappers and bands, and would usually escape the attention of

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the average purchaser, it is insufficient to negative respondent's implication that the handkerchiefs are manufactured from material imported from Ireland.

Respondent further contends that the inclusion of the word "Finish" in its legends "Soft Linen Finish" and "Linen Finish" is sufficient to apprise the public that the reference made by the legends is to the finish rather than the actual composition of the handkerchiefs. The evidence discloses, however, that the word "Linen" as here used is misleading, even though it be accompanied by the word "Finish." Moreover, there is serious doubt whether the terms "Soft Linen Finish" and "Linen Finish" are recognized at all in the trade.

PAR. 8. The acts and practices of respondent have the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the origin, composition, and character of respondent's product, and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken belief so engendered. Such acts and practices serve also to place in the hands of uninformed or unscrupulous dealers a means and instrumentality by which such dealers may mislead and deceive the purchasing public.

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 in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, 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, New York Handkerchief Manufacturing Co., 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 re-

spondent's handkerchiefs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Erin," or any other word indicative or suggestive of the country Ireland, to designate or describe handkerchiefs which are not in fact imported from Ireland or made of materials imported from Ireland.

2. Using the word "Linen," or any simulation thereof, alone or in combination with any other word or words, to designate or describe handkerchiefs which are not in fact made of linen.

3. Misrepresenting, through the use of picturizations, or by any other means, the place of origin of respondent's products or materials of which such products are made.

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

FRED B. PEAKE AND WILLIAM H. ROOSE, DOING
BUSINESS AS MARVEL LABORATORIES

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

Docket 4838. Complaint, Sept. 23, 1942—Decision, Nov. 30, 1942

Where two individuals, engaged in manufacture and interstate sale and distribution of their "Marvel Coal-Pep" or "Economy Coal Saver" treatment for coal; by means of advertisements in newspapers and periodicals, circulars, pamphlets, cards and testimonials, and other advertising media, and by advertising matter supplied to their salesmen and distributors—

- (a) Falsely represented that their said product created oxygen and aided in burning coal gases; that its use would save up to one-third of the cost of coal and make it burn better, create a steadier, more even heat, reduce ashes, soot, smoke and dirt, and aid in purifying the air from coal gases; and
- (b) Falsely represented that it would save labor in handling coal and ashes, reduce evaporation and help preserve the heating elements in coal; and that it was the newest, greatest money making specialty ever offered sales people;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said product:

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

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 Fred B. Peake and William H. Roose, co-partners, trading as Marvel Laboratories, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondents, Fred B. Peake and William H. Roose, are copartners, trading and doing business under the trade name of Marvel Laboratories, and maintain their office and principal place of business at 1205 Market Street, Louisville, Ky. Respondents are now and for some time last past have been engaged in the business

of manufacturing and selling a product designated as "Marvel Coal-Pep" advertised and recommended as a treatment for coal. Respondents prior to late in 1940 advertised and sold the same product under the name "Economy Coal-Saver."

Respondents cause their said product, when sold, to be shipped from their place of business in the State of Kentucky to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said product in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their said product, respondents have made many false, deceptive, and misleading statements and representations with respect to the character and effectiveness of their said product, such representations being made by means of advertisements inserted in newspapers and periodicals, by means of circulars, pamphlets, cards, and testimonials and other advertising media circulated generally among the purchasing public and by supplying to its salesmen and distributors advertising matter to be used in soliciting the sale of their product. Among and typical of the statements and representations so used and circulated are the following:

Every shovelful of coal you burn represents so much cash. In ordinary heating much of the coal gases is wasted in the chimney. Economy Coal-Saver creates oxygen and aids in burning these gases * * *. It is equally effective as a soot destroyer and smoke reducer. It helps burn the soot and carbon. Save up to one-third with Economy Coal-Saver.

Economy Coal-Saver, when used as directed, is guaranteed to make coal burn better, create a steadier, more even heat, less ash. * * *

* * * makes more heat; saves labor, shoveling coal and ashes; keeps your heating plant clear of soot; * * *

It causes no odors or gases whatever, but aids in purifying the air. * * *

By treating the coal when it is first put in the bin, it aids in reducing evaporation and helps to preserve its heating elements.

Marvel Coal-Pep; Chemical Coal Treatment for More Heat, Less Soot, Less Smoke, Less Ash, Less Dirt; For Soft Coal—Hard Coal, Coke or Lignite.

The newest and biggest money making specialty ever offered sales people.

PAR. 3. By and through the use of the foregoing statements and representations the respondents represent that their said product creates oxygen and aids in burning coal gases created in the combustion of coal; that its use will save up to one-third in the cost of coal; that it makes coal burn better, creates a steadier, more even heat; that it reduces ashes, soot, smoke, dirt, and aids in purifying the air of gases arising in the use of coal; that it will save labor in handling coal and ashes; that it reduces evaporation and helps preserve the heating ele-

ments in coal and that it is the newest and biggest money making specialty ever offered sales people.

PAR. 4. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact the use of respondents' said product will not create an amount of oxygen sufficient to affect in any manner the combustion qualities of coal. It will not aid in burning gases created in the combustion of coal. It will not save one-third or any other appreciable amount of the cost of coal. It will not make coal burn better and create a steadier, more even heat. It will not reduce ashes, soot, smoke, and dirt in appreciable or measurable quantities and it will not save labor in handling coal and ashes. It will not purify the air of gases resulting in the combustion of coal. It will not reduce evaporation and help preserve the heating elements in coal, and it is not the newest and biggest money making specialty ever offered sales people.

PAR. 5. The use by the respondents of the foregoing false statements, representations, and advertisements, disseminated as aforesaid, with respect to said product designated as "Economy Gas-Saver" and "Marvel Coal-Pep," 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 into the purchase of substantial quantities of respondents' said product.

PAR. 6. The aforesaid acts and practices of respondents, 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 September 23, 1942, issued and thereafter served its complaint in this proceeding upon respondents, Fred B. Peake and William H. Roose, individually, and as copartners, doing business under the trade name of Marvel Laboratories, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On October 28, 1942, Fred B. Peake, one of the respondents herein, filed his answer, in which answer he admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. On October 7, 1942, respondent, William H. Roose, filed his answer to the complaint herein, and thereafter the Commission, by order entered herein,

granted his 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, which substitute answer likewise waived all intervening procedure and further hearing as to said facts, and was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer of respondent, Fred B. Peake, and substitute answer of respondent, William H. Roose, individually, and as copartners, doing business under the trade name of Marvel Laboratories; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Fred B. Peake and William H. Roose, are copartners, trading and doing business under the trade name of Marvel Laboratories, and maintain their office and principal place of business at 1205 Market Street, Louisville, Ky. Respondents are now and for some time last past have been engaged in the business of manufacturing and selling a product designated as "Marvel Coal-Pep," advertised and recommended as a treatment for coal. Respondents prior to late in 1940 advertised and sold the said product under the name "Economy Coal-Saver." Respondents cause their said product, when sold, to be shipped from their place of business in the State of Kentucky to purchasers thereof located in various other States of the United States. Respondents maintain and all times mentioned herein have maintained a course of trade in said product in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their said product, respondents have made many false, deceptive, and misleading statements and representations with respect to the character and effectiveness of their said product, such representations being made by means of advertisements inserted in newspapers and periodicals, by means of circulars, pamphlets, cards and testimonials, and other advertising media circulated generally among the purchasing public, and by supplying to their salesmen and distributors advertising matter to be used in soliciting the sale of their product. Among and typical of the statements and representations so used and circulated are the following:

Every shovelful of coal you burn represents so much cash. In ordinary heating much of the coal gases is wasted in the chimney. Economy Coal-Saver creates oxygen and aids in burning these gases * * *. It is equally effective as a soot destroyer and smoke reducer. It helps burn the soot and carbon. Save up to one-third with Economy Coal-Saver.

Economy Coal-Saver, when used as directed, is guaranteed to make coal burn better, create a steadier, more even heat, less ash. * * *

* * * makes more heat; saves labor, shoveling coal and ashes; keeps your heating plant clear of soot; * * *

It causes no odors or gases whatever, but aids in purifying the air. * * *

By treating the coal when it is first put in the bin, it aids in reducing evaporation and helps to preserve its heating elements.

Marvel Coal-Pep; Chemical Coal Treatment for More Heat, Less Soot, Less Smoke, Less Ash, Less Dirt; For Soft Coal—Hard Coal, Coke or Lignite.

The newest and biggest money making specialty ever offered sales people.

PAR. 3. By and through the use of the foregoing statements and representations the respondents represent that their said product creates oxygen and aids in burning coal gases created in the combustion of coal; that its use will save up to one-third in the cost of coal; that it makes coal burn better, creates a steadier, more even heat; that it reduces ashes, soot, smoke, dirt, and aids in purifying the air of gases arising in the use of coal; that it will save labor in handling coal and ashes; that it reduces evaporation and helps preserve the heating elements in coal, and that it is the newest and biggest money making specialty ever offered sales people.

PAR. 4. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the use of respondent's said product will not create an amount of oxygen sufficient to affect in any manner the combustion qualities of coal. It will not aid in burning gases created in the combustion of coal. It will not save one-third or any other appreciable amount of the cost of coal. It will not make coal burn better and create a steadier, more even heat. It will not reduce ashes, soot, smoke, and dirt in appreciable or measurable quantities, and it will not save labor in handling coal and ashes. It will not purify the air of gases resulting from the combustion of coal. It will not reduce evaporation and help preserve the heating elements in coal, and it is not the newest and biggest money making specialty ever offered sales people.

PAR. 5. The use by the respondents of the foregoing false statements, representations, and advertisements, disseminated as aforesaid, with respect to said product designated as "Economy Gas-Saver" and "Marvel Coal-Pep," 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

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such false statements, representations, and advertisements are true, and into the purchase of substantial quantities of respondents' said product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, Fred B. Peake, and the substitute answer of respondent, William H. Roose, individually, and as copartners, doing business under the trade name of Marvel Laboratories, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Fred B. Peake and William H. Roose, individually, and as copartners, trading under the name Marvel Laboratories, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' product designated "Marvel Coal-Pep" and "Economy Coal-Saver," or any other product of substantially similar composition, whether sold under the same names or under any other name, do forthwith cease and desist from:

Representing in any manner whatsoever that said product will aid in the combustion of coal so as to produce more heat therefrom; that it will, when added to coal, save one-third or any other appreciable amount in the cost of coal; that it will make coal burn better or create a steadier, more even heat; that it will reduce or eliminate ashes, soot, smoke, or dirt; that it will create or produce an amount of oxygen sufficient to affect the burning or heating qualities of coal; that it will save labor in handling coal or ashes; that it will purify the air of gases resulting from the combustion of coal; that it will reduce evaporation and help preserve the heating elements in coal; or

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that said product is the biggest money making specialty ever offered sales people.

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

IN THE MATTER OF
THE BRUNSWICK-BALKE-COLLENDER COMPANY

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

Docket 3604. Complaint, Sept. 23, 1938—Decision, Dec. 7, 1942

Where a corporation which (1) had long been engaged in the manufacture and competitive offer and sale, among other commodities, of bowling pins and bowling supplies to, principally, owners and operators of bowling alleys; (2) produced from 65 to 80 percent of all of said products sold and distributed in the United States; (3) installed the alleys and furnished the pins and supplies on a lease basis for many years for the annual tournament for tenpin bowlers of the American Bowling Congress at a saving thereto of many thousands of dollars as compared with what it would otherwise have to pay for the alley installations and pins, without considering the cost of supplies and servicing; and (4) was the only manufacturer allowed to advertise bowling equipment at the tournaments in question, its said advertisements being forwarded to all participants;

In connection with a sales promotion plan which it inaugurated and carried on for several years as "The Brunswick \$34,000 Red Crown Bowling Sweepstakes," and under which it awarded substantial prizes in money and merchandise to the winning bowling teams and members thereof (required under conditions laid down by it to play for 7 consecutive weeks three games a week "Qualifying Round Play" and to engage under a similar weekly schedule in 6 weeks of so-called "Prize Play"), organized in five classes composed of teams of relatively equal skill, with prizes of equal value provided for all of the five classes, awarded both on weekly basis and on the basis of the best performance for the six weeks of "Prize Play"; and in connection with which it furnished to qualifying proprietors advertising material, entry blanks, and banners as official "Brunswick Sweepstakes Bowling Alleys"—

- (a) Made it a condition, in order for alleys to qualify for the sweepstakes contest, that their owners and operators must purchase four sets of their "King" pins or two sets of "King" pins and three sets of their "Queen" pins, and not less than \$15 worth of supplies for each alley in their establishments—quantities sufficient to supply the full requirements of the average alley for the full bowling season;
- (b) Engaged in an extensive advertising plan through advertisements in various periodicals distributed among such proprietors, and through advertising cartoons played upon the fear of losing business, through stressing the alleged reaction of customers of those alleys which had qualified and the dissatisfaction of customers of those who had not done so; and issued various advertising calculated to arouse the interest of bowlers in the sweepstakes for the purpose of inducing them to demand that the proprietors of the alleys in which they bowled qualify their establishments for the sweepstakes, and instructed their salesmen to call proprietors' attention to

such demand; intending thereby to bring at least 80 percent of all bowling establishments into the Sweepstakes plan;

With the result that a substantial number of proprietors who had previously purchased pins and supplies in whole or in part from competitors were induced to qualify their establishments, as aforesaid, and competitors were deprived of their patronage and suffered substantial loss; there was a tendency, through aforesaid contracts made with proprietors in order for latter to qualify for said contest, to eliminate as customers of competitors some 1,700 proprietors who owned and controlled a substantial portion of all the bowling alleys available to the public; proprietors were induced to purchase pins and supplies which they would not otherwise have purchased from it, and to purchase from it exclusively, without regard to comparative price or quality, and irrespective of their need or desire; trade was diverted from competitors to it, and by reason of its dominant position, competition in sale of such products was unreasonably restrained and lessened and there was a tendency to create in it a monopoly in the sale thereof; and the effect of such contracts—which constituted, in effect, contracts for sale of goods on the condition, agreement, or understanding that the proprietors should not use or deal in products of competitors—by reason of its dominant position and the number of contracts negotiated by it, was substantially to lessen competition and tend to create a monopoly in it in aforesaid products:

Held, (1) 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; and

(2) That said acts and practices, in requiring proprietors to enter into contracts to purchase pins and supplies sufficient for their requirements and for the entire season in order to qualify as aforesaid, and under which, in effect, they were not to use or deal in competitive supplies, with effect, by reason of its said dominant position, of substantially lessening competition and tending to create a monopoly in products in question, constituted a violation of section 3 of the Clayton Act.

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

Mr. Daniel J. Murphy for the Commission.

Mr. Frank W. Sullivan of Mayer, Meyer, Austrian & Platt, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Act of Congress approved October 15, 1914 (Public No. 212, 15 U. S. C., sec. 12, *et seq.*, the Clayton Act), and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that The Brunswick-Balke-Collender Co. has violated the provisions of said acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the

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

Count 1

PARAGRAPH 1. The Brunswick-Balke-Collender Co., hereinafter referred to as the respondent, is a corporation, organized and existing under the laws of the State of Delaware and has its principal office and place of business at 629 South Wabash Avenue, Chicago, Ill. The said respondent is now, and for many years prior hereto has been, engaged in the business of manufacturing, offering for sale, and selling, among other commodities, bowling pins, bowling balls, and miscellaneous bowling supplies and equipment, hereinafter referred to as bowling equipment, necessary for the play and conduct of the game known as American tenpins or duckpins, popularly known, and hereinafter referred to, as bowls, and in the course and conduct of its business the respondent has been, and is now, offering for sale, and has been, and is now, selling and shipping, bowling equipment in commerce across State lines to various purchasers thereof at said purchasers' respective places of business located in the several States of the United States other than the State from which said bowling equipment has been, and is now being, shipped by the respondent.

PAR. 2. In the course and conduct of its business as aforesaid the respondent has been, and is now, engaged in active and substantial competition with other manufacturers and sellers of bowling equipment who, in competition with the respondent, have been, and are now, manufacturing bowling equipment and have been, and are now, offering for sale, selling and shipping bowling equipment in commerce across State lines to various purchasers thereof at said purchasers' respective places of business located in the several States of the United States other than the States from which said bowling equipment has been, and is now being, shipped by said other manufacturers and sellers.

PAR. 3. For many years prior hereto the respondent has manufactured and sold, and does now manufacture and sell, the greater part of all bowling equipment manufactured and sold in the United States, the respondent's production and sales thereof having been, and now being, in excess of the aggregate of its several competitors' production and sales.

PAR. 4. The game of bowls is played on hardwood runways known as bowling alleys and may be played by individuals or by teams of individuals. The owners and operators of bowling alleys are the principal purchasers of bowling equipment in the United States and are the principal customers of the respondent and of the respondent's

competitors. The greater number of bowling alleys in the United States are public alleys in the sense that the members of the general public are allowed to play the aforesaid game or to bowl thereon for a consideration fixed by the owners or operators of such alleys, who own or operate the same for profit and are dependent therefor upon the patronage and use of said alleys by the members of the general public.

PAR. 5. Prior to the month of February 1937, the respondent contrived, during said month announced, and thereafter extensively advertised and conducted on a national scale a certain contest which it termed "The Brunswick \$34,000 Red Crown Bowling Sweepstakes" and by which it offered and awarded substantial prizes in money and merchandise to the winning participants in said contest, which was governed by the following rules fixed and announced by the respondent, to wit:

(a) The contest was open to all five-men bowling teams which held membership in the American Bowling Congress, or bowled in bowling leagues sanctioned by the American Bowling Congress, and filed contest entry blanks with the respondent on or before, or postmarked not later than, October 24, 1937.

(b) Teams were required to play, and to complete prior to December 19, 1937, 21 games of bowls, played at the rate of 3 games per week for 7 consecutive weeks, which series of games was known as "Qualifying Round Play."

(c) On the basis of each team's average score in Qualifying Round Play each team entered in the contest was, at the close of such play, placed in one of five classes of teams, the membership of each class being selected from, and composed of, teams of more or less equal skill, as reflected by such teams' respective average scores in Qualifying Round Play.

(d) After the conclusion of Qualifying Round Play, and for a period of 6 consecutive weeks beginning January 24, 1938, teams were to engage in so-called "Prize Play," each team being required to play three games of bowls per week during such play. On the basis of scores established during Prize Play the respondent made six weekly awards of prizes consisting of \$250, \$150 and \$100 in cash to the teams in each class having, respectively, in their respective classes, the highest, the second highest and the third highest total scores for each respective week of Prize Play. To each member of the teams having the fourth, fifth, sixth, and seventh highest total scores in their respective classes during each respective week of Prize Play the respondent awarded a bowling ball.

(e) At the conclusion of Prize Play the respondent awarded "Grand Prizes" of \$750, \$250, \$150 and \$100 in cash to the teams in each class having, respectively, in their respective classes, the highest, the second highest, the third highest, and the fourth highest total scores for the six weeks of Prize Play. To each member of each team having the fifth, sixth, seventh, eighth, and ninth highest total scores in their respective classes for the 6 weeks of Prize Play the respondent awarded a bowling ball, and to each member of each team having the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth highest total scores in their respective classes during Prize Play the respondent awarded a pair of bowling shoes.

(f) In order to be eligible for the contest all teams were required to bowl all contest games in bowling alley establishments displaying the so-called "Official Brunswick Sweepstakes Emblem" and on so-called "Official Brunswick Sweepstakes Bowling Alleys," and each team was required to bowl its Prize Play in the same bowling establishment in which it had bowled its Qualifying Round Play.

(g) In order to qualify bowling alleys as "Official Brunswick Sweepstakes Bowling Alleys" the proprietors or operators of the bowling establishments in which bowling alleys were located were required to purchase from the respondent, and to display in their bowling establishments, the Official Brunswick Sweepstakes Emblem, in consideration for the sale of which said emblem by the respondent to said proprietors and operators the respondent required said proprietors and operators to purchase from it for each alley in their respective establishments not less than four sets of bowling pins at a price of \$45, more or less, and \$15 worth of miscellaneous bowling equipment, regardless of whether said proprietors or operators were or were not in need of, or did or did not desire to purchase, said bowling pins and miscellaneous bowling equipment or either of them for their bowling establishments or alleys, and in addition thereto the respondent required some of said proprietors or operators to employ the respondent to recondition or resurface some or all of the bowling alleys located in their respective bowling establishments at a cost to them of \$10 per alley, more or less, regardless of whether said proprietors or operators did or did not need or desire to have their said bowling alleys reconditioned or resurfaced.

PAR. 6. For the average or ordinary bowling alley located in the United States, and for the greater number of bowling alleys located in the United States, four sets of bowling pins and \$15 worth of miscellaneous bowling equipment are equal to or in excess of the

quantity of bowling pins and miscellaneous bowling equipment necessary to serve the requirements of said alleys for a full bowling season of 1 year, and are equal to or in excess of the quantity of bowling pins and miscellaneous bowling equipment purchased therefor by the proprietors or operators of said alleys for or during a full bowling season of 1 year, all of which was well known to the respondent prior to and at the time the respondent contrived the aforesaid contest and throughout the entire period during which said contest was advertised and conducted by the respondent.

PAR. 7. The respondent duly conducted said contest pursuant to the aforesaid rules thereof, except as hereinafter noted, and did sell to numerous proprietors and operators of bowling establishments located in the United States, and ship in commerce across State lines between and among the several States of the United States to said proprietors and operators, so-called Official Brunswick Sweepstakes Emblems, bowling pins and miscellaneous bowling equipment, and did demand and require that said proprietors and operators execute a written form of agreement providing that failure on their part to accept delivery of or to make payment for said bowling pins and miscellaneous bowling equipment at the time or times specified in said agreement operated to disqualify from the aforesaid contest all contest entrants bowling in the said proprietors' or operators' respective bowling establishments, and, except as hereinafter noted, the respondent did refuse to sell or ship so-called Official Brunswick Sweepstakes Emblems to any proprietors or operators of bowling establishments unless said proprietors or operators purchased from the respondent bowling pins and miscellaneous bowling equipment in the quantity and amount set forth above in subparagraph (g) of paragraph 5, without regard to whether said proprietors or operators needed or desired to purchase said bowling pins and miscellaneous bowling equipment or either of them. Many sales of bowling pins and miscellaneous bowling equipment which were shipped in commerce across State lines by the respondent to purchasers thereof were made by the respondent to proprietors or operators of bowling establishments who did not need or desire to purchase said bowling pins or miscellaneous bowling equipment or either of them, or if needing the same did not desire to purchase them from the respondent, but were required by the respondent to, and did, purchase said bowling pins and miscellaneous bowling equipment from the respondent in order to obtain from the respondent so-called Official Brunswick Sweepstakes Emblems necessary to qualify bowling alleys as so-called Official Brunswick Sweepstakes Bowling Alleys.

PAR. 8. In conducting the aforesaid contest and in selling and shipping in commerce across State lines, as aforesaid, bowling equipment and so-called Official Brunswick Sweepstakes Emblems the respondent:

(a) Induced some purchasers of said equipment and emblems to purchase the same by wilfully and falsely representing to said purchasers that competitors of said purchasers had qualified the bowling alleys in their respective establishments as Official Brunswick Sweepstakes Bowling Alleys, when such was not a fact.

(b) Coerced some purchasers of said equipment and emblems to purchase the same by threatening to open and operate in competition with said purchasers Official Brunswick Sweepstakes Bowling Alleys if such purchasers failed to qualify their respective alleys as such by purchasing said equipment and emblems.

(c) Wilfully and falsely represented to purchasers of said equipment and emblems that the aforesaid contest was being conducted without cost or expense to them, and that the respondent's price on said equipment had not been increased for the purpose of raising funds with which to defray the cost of said contest, when in truth and in fact said purchasers were required to purchase equipment and emblems as aforesaid in order to qualify their respective bowling alleys for said contest and the respondent had increased the price of bowling pins and other bowling equipment for the purpose of raising funds with which to defray the cost of said contest.

(d) Wilfully and falsely represented to purchasers of said equipment that the terms and conditions upon which bowling alleys might be qualified for said contest were uniform and the same to all proprietors and operators of bowling establishments, when in truth and in fact the respondent permitted certain proprietors and operators of bowling establishments to qualify their respective alleys for said contest upon terms different from, and more favorable than, the terms accorded by the respondent to other and competing proprietors and operators of bowling establishments.

PAR. 9. The respondent's intent and purpose in announcing and conducting the aforesaid contest, and the results and effects of said contest, were and are to divert trade from the respondent's competitors to the respondent, to coerce and cause customers and prospective customers of respondent's competitors to refrain from purchasing bowling equipment from respondent's competitors and to purchase the same from the respondent exclusively, without regard to the comparative price or quality of bowling equipment manufactured and sold by the respondent and that manufactured and sold by the respondent's competitors and irrespective of whether said customers were or were not

in need of or did or did not desire to purchase said bowling equipment, to coerce and cause purchasers of bowling equipment to purchase such items and quantities thereof as were or might be required by the respondent, without regard to said purchasers' need or desires, to divert trade and patronage from proprietors or operators of bowling establishments who did not qualify the bowling alleys in their respective establishments as so-called Official Brunswick Sweepstakes Bowling Alleys and to transfer such trade and patronage to proprietors or operators of bowling establishments who did so qualify the bowling alleys in their respective establishments, to injure and oppress in their respective businesses competitors of the respondent and those proprietors and operators of bowling establishments who did not qualify the bowling alleys in their respective establishments as Official Brunswick Sweepstakes Bowling Alleys and unreasonably to restrain trade in the manufacture and sale of bowling equipment and in the operation of bowling establishments.

PAR. 10. The effects and results of the conduct by the respondent of the aforesaid contest have been and now are to cause and require many customers of respondent's competitors to cease purchasing bowling equipment from respondent's competitors and to purchase the same exclusively from the respondent, to cause many prospective customers of respondent's competitors to purchase bowling equipment exclusively from the respondent, to deprive many purchasers of bowling equipment of the privilege of purchasing the same from respondent's competitors and the right freely to purchase such equipment or items thereof in such amounts and at such times as they wish and from such sources as they desire to patronize, to restrict and limit purchasers of bowling equipment to the purchase of the respondent's bowling equipment exclusively and to deprive such purchasers and the general public of the benefit of free and active competition in the manufacture and sale of bowling equipment, substantially to injure competition in the manufacture and sale of bowling equipment, unduly and unreasonably to hinder, obstruct, restrain, and lessen competition in the manufacture and sale of bowling equipment and to tend to create in the respondent a monopoly in the manufacture and sale of bowling equipment.

PAR. 11. The acts and practices of the respondent as herein alleged are all to the prejudice of competitors of the respondent and of the public, have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in the sale of bowling equipment in commerce within the intent and meaning of the Federal Trade Commission Act, have unreasonably restrained such commerce in bowling equipment, and constitute unfair methods

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

Count 2

PARAGRAPH 1. Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Count 1 of this complaint are, by reference, incorporated herein and made a part of this paragraph.

PAR. 2. The effect of the acts and practices of the respondent as herein alleged and the sale by the respondent of bowling equipment and so-called Official Brunswick Sweepstakes Emblems in the manner and form and under the circumstances above set forth has been and is now, substantially to lessen competition in the manufacture and sale of bowling equipment and has tended, and now tends, to create in the respondent a monopoly in the manufacture and sale of bowling equipment within the intent and meaning of section 3 of the above-mentioned Act of Congress approved October 15, 1914 (15 U. S. C., sec. 14), and the aforesaid acts and practices of the respondent and the sale by respondent of bowling equipment and so-called Official Brunswick Sweepstakes Emblems in the manner and form and under the circumstances above set forth, with the effect aforesaid, constitute violations of said section 3 of the Act of Congress approved October 15, 1914 (15 U. S. C., sec. 14).

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 September 23, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, The Brunswick-Balke-Colender Co., 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 the Federal Trade Commission Act and also charging it 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 respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Daniel J. Murphy, attorney for the Commission, and in opposition

to the allegations of the complaint by Frank W. Sullivan, attorney for the respondent, 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 on said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Brunswick-Balke-Collender Co., is a corporation, organized and existing under the laws of the State of Delaware and has its principal office and place of business at 629 South Wabash Avenue, Chicago, Ill. The said respondent is now, and for many years last past has been, engaged in the business of manufacturing, offering for sale, and selling, among other commodities, bowling pins and bowling supplies. In the course and conduct of its said business, respondent causes and has caused said products, when sold, to be shipped from its 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 bowling pins and bowling supplies in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business the respondent has been, and is now, engaged in active and substantial competition with other manufacturers and sellers of bowling pins and bowling supplies, who, in competition with respondent, have been and are now offering for sale, selling, and shipping bowling pins and bowling supplies in commerce among and between the various States of the United States.

PAR. 3. For many years the respondent has manufactured and sold the greater part of the bowling equipment manufactured and sold in the United States, and respondent's production and sales of tenpins and bowling supplies are in excess of the aggregate of its several competitors and constitute from 65 to 80 percent of all the tenpins

and bowling supplies sold and distributed in the United States. The owners and operators of bowling alleys are the principal purchasers of tenpins and bowling supplies in the United States and are the principal customers of the respondent and of the respondent's competitors. The greater number of bowling alleys in the United States are public alleys in the sense that members of the general public are allowed to play thereon for a consideration fixed by the owners or operators of such alleys, who own or operate the same for profit and who are dependent therefor upon the patronage and use of said alleys by the members of the general public.

PAR. 4. Prior to the month of February 1937, the respondent inaugurated, and during said month announced and thereafter extensively advertised and conducted on a national scale, a certain contest which was termed "The Brunswick \$34,000 Red Crown Bowling Sweepstakes," by which it offered and awarded substantial prizes in moneys and merchandise to winning participants in said contest, which was governed by certain rules announced by respondent. The rules of said contest were as follows:

(a) The contest was open to all 5-men bowling teams which held membership in the American Bowling Congress or bowled in bowling leagues sanctioned by the American Bowling Congress.

(b) Teams were required to play, and to complete prior to December 1937, 21 games of tenpins played at the rate of 3 games per week for 7 consecutive weeks, which series of games was known as "Qualifying Round Play."

(c) On the basis of each team's average score in Qualifying Round Play, each team entered in the contest was, at the close of such play, placed in one of five classes of teams, the membership of each class being selected from, and composed of, teams of more or less equal skill as reflected by such team's respective average scores in Qualifying Round Play.

(d) After the conclusion of Qualifying Round Play and for a period of 6 consecutive weeks beginning January 24, 1938, teams were to engage in so-called "Prize Play," each team being required to play 3 games of tenpins per week during such play. On the basis of scores established during Prize Play, the respondent made 6 weekly awards of prizes, consisting of \$250, \$150, and \$100 in cash to the teams in each class having, respectively, in their respective classes the highest, the second highest, and the third highest total scores for each respective week of Prize Play. To each member of the teams having the fourth, fifth, sixth, and seventh highest total scores in their respective classes during each respective week of Prize Play, the respondent awarded a bowling ball.

(e) At the conclusion of Prize Play, the respondent awarded "grand prizes" of \$750, \$250, \$150, and \$100 in cash to the teams in each class having, respectively, in their respective classes, the highest, the second highest, the third highest, and the fourth highest total scores for the past 6 weeks of Prize Play. To each member of each team having the fifth, sixth, seventh, eighth, and ninth highest total scores in their respective classes for the six weeks of Prize Play, the respondent awarded a bowling ball, and to each member of each team having the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth highest total scores in their respective classes during the Prize Play, the respondent awarded a pair of bowling shoes.

(f) All teams were required to bowl all contest games, including Qualifying Round Play, in bowling-alley establishments displaying the official Brunswick Bowling Sweepstakes Emblem and on so-called Official Brunswick Sweepstakes Bowling Alleys, and each team was required to bowl its Prize Play in the same Official Brunswick Sweepstakes bowling establishments where Qualifying Round Play was bowled. Similar contests were conducted by the respondent during the 1938-39 season and also during the 1939-40 season.

PAR. 5. The Brunswick Sweepstakes contest applied only to the game of tenpins and did not apply to the games of candlepins and duckpins, which are played with pins of different size and shape, with different weights of balls, and under different rules than the game of tenpins.

PAR. 6. For the purpose of maintaining uniformity in its Sweepstakes contests, the respondent required that all teams competing in the Sweepstakes must have a membership in the American Bowling Congress. The American Bowling Congress was organized in 1895 for the purpose of regulating the game of tenpins and promulgates rules, regulations, and specifications to govern the game of tenpins. All members of the Congress who participate in contests sanctioned by the American Bowling Congress must bowl only upon alleys complying with the specifications of the American Bowling Congress and certified by it. These specifications cover the dimensions of the alleys, which must not be less than 41 inches and not more than 42 inches in width. The length must be 60 feet from the foul line to the center of the head pin, with a clear run back of the foul line of not less than 15 feet, the pin spots to be 12 inches apart, with rear pins 3 inches from the pit edge of the alleys. The specifications also cover the dimensions and weight of the pins and the weight, size, and balance of the bowling balls.

PAR. 7. The American Bowling Congress since 1901 has conducted an "Annual Tournament" for tenpin bowlers. The number of participants in these tournaments has been steadily growing in each succeeding tournament. The 1940 tournament, held in Detroit, Mich., had 32,000 contestants and lasted sixty-two days. For the conduct of these tournaments, the respondent, each year, except for the year 1907, has installed the alleys and furnished the pins and supplies on a lease basis and has serviced the alleys during the tournament. In the 1940 tournament, the respondent installed and serviced forty alleys and provided approximately 6,000 sets of tenpins on a lease basis for a consideration of \$12,500. In addition, the respondent is the only manufacturer allowed to advertise bowling equipment at these tournaments, for which privilege the respondent pays \$1,000 for an advertisement in the tournament schedule, which is forwarded to all participants. If the American Bowling Congress were to pay for said alley installations the cost would be from \$60,000 to \$64,000 at \$3,000 to \$3,300 a set of two alleys, and the cost of pins would be about \$71,000 at \$11.85 a set, making a total of approximately \$133,000 without considering the cost of supplies and servicing of the alleys.

PAR. 8. There has been a marked increase in the number of bowlers and the interest in bowling, as indicated by the membership in the American Bowling Congress. The membership of the American Bowling Congress was as follows for the respective seasons:

Season :	Teams
1935-36.....	51,743
1936-37.....	63,153
1937-38.....	91,975
1938-39.....	103,330
1939-40.....	130,560

Teams consist of from 5 to 7 members. There has likewise been a marked increase in the value of bowling alleys and accessories manufactured in the United States, as shown by the biannual census of manufacturers issued by the United States Department of Commerce, which lists such values as follows:

1933.....	\$475,350
1935.....	1,613,801
1937.....	3,231,719

PAR. 9. There are approximately 7,500 to 8,000 bowling alley proprietors in the United States. This total includes many establishments which could not qualify under the specifications provided by the rules of the American Bowling Congress and also establishments operating duckpin and candlepin alleys. Approximately 70 percent to 85 percent of the alleys are used for tenpins. In 1940 there were

4,700 tenpin bowling establishments certified by the American Bowling Congress. There were at least 1,769 proprietors of bowling alleys who qualified for respondent's 1937 Sweepstakes contest.

PAR. 10. The manufacture of tenpins is confined to approximately six manufacturers, including the respondent and one manufacturer who sells and has sold its entire output to the respondent for the past 18 years. The sales of tenpins made by the respondent for the years 1935-38 are as follows:

	<i>Sets of tenpins</i>
1935 -----	51,500
1936 -----	76,304
1937 -----	87,747
1938 -----	92,619

PAR. 11. The respondent manufactures three grades of tenpins which are known as King pins, Queen pins, and Duke pins. All of these pins are manufactured from maple wood and comply with the American Bowling Congress specifications. The King pin is the best quality tenpin manufactured by the respondent. It was introduced in April 1936 at the price of \$10.75 per set, which price was increased to \$11.85 per set effective October 1, 1936. Respondent's second quality pin, the Queen pin, was sold at the price of \$8.95 per set until October 1, 1936, at which time the price was increased to \$9.45 per set. Respondent's third quality pin, the Duke pin, was sold at \$5.95 per set until October 1, 1936, at which time the price of this pin was increased to \$6.45 per set.

PAR. 12. For the purpose of promoting a widespread interest in respondent's Sweepstakes contest and giving all classes of bowlers an opportunity to participate, regardless of their proficiency, teams were divided into five classes, as follows:

Class A—5-man teams whose 3-game series score in Qualifying Round Play averaged over 2,950.

Class B—5-man teams whose 3-game series score in Qualifying Round Play averaged between 2,650 and 2,949.

Class C—5-man teams whose 3-game series score in Qualifying Round Play averaged between 2,400 and 2,649.

Class D—5-man teams whose 3-game series score in Qualifying Round Play averaged between 2,100 and 2,399.

Class E—5-man teams whose 3-game series score in Qualifying Round Play averaged under 2,100.

The Qualifying Round Play consisted of 21 games played in 7 successive weeks, and under the above classification a bowler having a low average game had the same opportunity for the prize awards as a better bowler, as each bowler would compete with others in his same class. The prize awards were the same for each class.

PAR. 13. In order to qualify their alleys for the Sweepstakes contest promoted by the respondent, it was necessary for proprietors of bowling alleys to purchase from the respondent four sets of King pins or two sets of King pins and three sets of Queen pins for each and every alley in their establishments and, in addition thereto, to purchase not less than \$15 worth of supplies for each and every alley in their establishments. Upon making such purchases from the respondent the establishments then became Official Brunswick Sweepstakes bowling establishments and were furnished by the respondent with various advertising material, entry blanks, and banners.

PAR. 14. During the year 1937 the respondent placed advertisements in various periodicals distributed among bowling-alley proprietors, of which the following is a typical example:

ATTENTION BOWLING PROPRIETORS

We suggest that you

**DO NOT PLACE ANY ORDERS
FOR TENPINS
OR CONTRACT FOR
RESURFACING OF ALLEYS**

until you hear

**THE BIGGEST PROFIT
MAKING NEWS IN
BOWLING HISTORY**

from your BRUNSWICK salesman

WAIT NOW AND AVOID REGRETS LATER

PAR. 15. The advertising plan of the respondent was based upon two elements—the opportunity for profit and fear of losing business, with primary stress being placed by the respondent on the fear motive in its advertising and selling campaign.

Several advertising cartoons issued by the respondent depicted bowlers in high glee because the proprietors of the bowling establishments where they bowled had “tied in” with the Brunswick Sweepstakes, and such bowlers were variously quoted as follows:

The proprietor of our place has the interest of bowlers at heart 100%.

Mighty swell of our proprietor to get us in this! I am glad we bowl here!

I am sure glad our team bowls at this place.

Other bowlers are depicted as dissatisfied because their proprietors had not “tied in” with the Brunswick Sweepstakes, and such bowlers were variously quoted as follows:

I am going to see our league secretary about moving out of this joint! We're going where we'll get a crack at that \$34,000 prize list and I don't mean maybe!

Just because we bowl at the wrong place we weren't in the money! That burns me up!

PAR. 16. Various advertising was also issued by the respondent calculated to arouse the interest of the bowler in the Sweepstakes for the purpose of inducing bowlers to demand that the proprietors of alleys in which they bowled qualify their establishments for the Sweepstakes. Salesmen were instructed to call the attention of the proprietors to this result, as is indicated by the following typical statement issued by respondent to its salesmen:

Bowlers' interests are going to be focused on this tournament. Never before has there been one of this size without 1 penny's expense to anyone. They see these entry blanks all over town (we expect to print millions of them), they see the banners in all the better places, they see the buttons on the fellows' coats. They notice posters on the bulletin boards. Don't you see how all this is going to make almost everyone in this community want to participate? If they can't get into this tournament they're going to want to know why. Every operator tying into this plan will be able to say "come and get it." The fellows who don't go along are going to be out in the cold. You know and I know that bowling teams don't always stay at the same alley year after year. Many of them have left alleys and gone to other places for less important reasons than through inability to participate in this gigantic tournament. I don't see how a single proprietor who has the interests of his bowlers at heart could think of passing up a plan such as this to help himself and the bowlers at the same time.

Practically everybody in your community is going to know about it. * * * Bowlers are going to be interested right off the bat and this is all put out right at the beginning of the season. If they're bowling at a place that is not a part of this campaign there is a chance that they may even organize another team and come to a place where they can participate.

PAR. 17. It was the respondent's plan to bring at least 80 percent of all bowling establishments into the sweepstakes plan, and the fear motive was to be chiefly used for this purpose. This is indicated by instructions issued to salesmen, which read in part as follows:

Therefore, we know that we are putting it very low when we say that this campaign will cost your company well over \$50,000. For that reason we expect every salesman to sell better than 80% of the bowling alleys in each territory. We cannot permit salesmen to attack with this plan in a weak and haphazard manner. Each man should study the sales story that follows and learn it. * * * Your company is growing rapidly and is on the lookout for top notch men to advance up the ladder. We cannot continue with men who don't take advantage of opportunities such as this well planned campaign. In other words, this campaign will be used as a yardstick to measure the ability of our salesmen. Anyone who cannot make his quota with a plan as perfect as this one does not deserve the title of "Brunswick Salesman."

SELLING INSTRUCTIONS

There are only two outstanding reasons for anyone in business to make a purchase:

- (1) In order to make a profit.
- (2) Fear of losing customers in case purchase is not made.

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It is granted that there are other reasons, but their importance is so small in comparison to the two stated above that they can be entirely overlooked at this time. Thus, in planning your sales story ask yourself "Am I building a picture of profit coming to this man and at the same time am I making him see that there is a great possibility of his losing business, losing customers, if he does not enter into this idea?" Have every statement of yours lead up to or prove these two outstanding points. This is not cheap talk as developed by schools of salesmanship. It is the result of years of successful selling experience and has *always* succeeded in getting the business regardless of the product sold. In the sales story which follows, note how each and every part of this campaign is used to sell the product on the *profit* or *fear* idea.

PAR. 18. The respondent duly conducted said contest pursuant to the rules hereinbefore described and did sell to numerous proprietors and operators of bowling establishments located in the United States, bowling pins and miscellaneous bowling pins and miscellaneous bowling supplies, viz, four sets of King pins or two sets of King pins and three sets of Queen pins and \$15 worth of supplies for each alley in the establishment of such proprietors and operators.

PAR. 19. Based upon the testimony of operators and proprietors of bowling establishments and upon the testimony of dealers in, and salesmen of, bowling pins and bowling supplies, the Commission finds that four sets of King pins or two sets of King pins and three sets of Queen pins three sets of Queen pins and \$15 worth of miscellaneous supplies for each alley are sufficient to supply the full requirements of the average bowling alley for the full bowling season. A substantial number of the proprietors of bowling alleys who were induced by the respondent to qualify their establishments for the sweepstakes plan had previously purchased bowling pins and bowling supplies in whole or in part from competitors of the respondent. As a result, competitors of respondent were deprived of the patronage of such proprietors and suffered a substantial loss of customers and of sales because of respondent's sweepstakes plan.

PAR. 20. The contracts made by the respondent with proprietors of bowling establishments in order to qualify for the sweepstakes contest, by reason of the quantity purchases required in such contracts, had a tendency to eliminate as customers or prospective customers of respondent's competitors approximately 1,769 proprietors of bowling establishments who own or control a substantial portion of all the bowling alleys available to the public, and respondent's competitors were thereby precluded from an opportunity to sell bowling pins or bowling supplies to such alleys which had been so qualified. Furthermore, as a result of respondent's advertising and sales campaign, proprietors of bowling establishments were induced, through fear of losing business and through demands of bowling

customers, to qualify their alleys for respondent's sweepstakes contest and to purchase bowling pins and supplies from the respondent which they would not otherwise have purchased from the respondent.

PAR. 21. Through the use of the aforesaid acts and practices by the respondent, trade has been diverted from respondent's competitors to respondent through and by means of respondent's sweepstakes plan, and customers and prospective customers of respondent's competitors have been induced to refrain from purchasing bowling pins and supplies from respondent's competitors and to purchase the same from the respondent exclusively, without regard to the comparative price or quality of the bowling pins and supplies manufactured and sold by the respondent and those manufactured and sold by respondent's competitors, and irrespective of whether said customers were or were not in need of, or did or did not desire to purchase, said bowling pins and supplies.

PAR. 22. The Commission further finds that by reason of the dominant position of the respondent in the sale and distribution of bowling pins and bowling supplies, the use of the acts and practices by the respondent as herein described, has substantially injured competition in the sale of bowling pins and supplies, has unduly and unreasonably hindered, obstructed, restrained, and lessened competition in the manufacture and sale of said bowling pins and supplies, and has a tendency to create in the respondent a monopoly in the manufacture and sale of bowling pins and bowling supplies and to deprive purchasers and the general public of the benefit of free and active competition in the manufacture and sale of bowling pins and supplies.

PAR. 23. The Commission further finds that the contracts made by the respondent with the various bowling-alley proprietors in order to qualify their alleys for the "Brunswick \$34,000 Red Cross Bowling Sweepstakes," by reason of their requirement that such proprietors purchase sufficient bowling pins and supplies to fill their needs or requirements for the bowling season, constituted, in effect, contracts for the sale of goods on the condition, agreement, or understanding that such proprietors should not use or deal in bowling pins or bowling supplies of competitors of the respondent; and, by reason of the dominant position held by the respondent in the sale and distribution of bowling pins and bowling supplies and the number of contracts negotiated by the respondent, the effects of such contracts were substantially to lessen competition and tend to create a monopoly in the respondent in bowling pins and bowling supplies.

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CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of said 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 acts and practices of the respondent in requiring proprietors of bowling alleys to enter into contracts to purchase a quantity of bowling pins and bowling supplies sufficient for their requirements for the entire bowling season in order to qualify their bowling establishments for the "Brunswick \$34,000 Red Cross Bowling Steepstakes," with the effect that such contracts constituted a condition, agreement, or understanding that such purchasers shall not use or deal in bowling pins or bowling supplies of respondent's competitors have, by reason of the dominant position of the respondent in the sale and distribution of bowling pins and bowling supplies, the effect of substantially lessening competition and a tendency to create a monopoly in bowling pins and bowling supplies, and constitute a violation of section 3 of the Act of 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Edward 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 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 has violated the provisions of the Federal Trade Commission Act and has violated the provisions of that certain act of the Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, The Brunswick-Balke-Collender Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in con-

nection with the offering for sale, sale, and distribution of bowling pins, bowling supplies, bowling equipment, or other similar products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any sales promotion plan or method of sale which includes the promotion or operation of any bowling contest which requires a bowling-alley proprietor, in order to qualify for such contest, to purchase from the respondent all or substantially all of his bowling pins, bowling supplies, or bowling equipment for the bowling season during which such contest is held.

2. The use of any sales promotion plan or contest for the purpose, or having the effect, of coercing bowling-alley proprietors into purchasing all or substantially all of their bowling pins, bowling supplies, or bowling equipment from respondent.

It is further ordered, That the respondent, The Brunswick-Balke-Collender Co., a corporation, and its officers, agents, representatives, and employees directly or through any corporate or other device in connection with the sale, or the making of any contract for the sale, of bowling pins, bowling supplies, bowling equipment, or other similar products 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:

1. Selling, or making any contract for the sale of, bowling pins, bowling supplies, bowling equipment, or other similar products on the condition, agreement, or understanding that the purchaser thereof shall not use bowling pins, bowling supplies, bowling equipment, or other similar products other than those acquired from the respondent;

2. Using any sales promotion plan or method of sale which includes the promotion or operation of any bowling contest which requires a bowling alley proprietor to purchase or agree to purchase all or substantially all of his bowling pins, bowling supplies, or bowling equipment for the bowling season, where such sale or contract of sale is in effect a sale on the condition, agreement, or understanding that the purchaser thereof shall not use bowling pins, bowling supplies, or bowling equipment not manufactured or sold by the respondent.

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

IN THE MATTER OF
THE WIRE ROPE & STRAND MANUFACTURERS
ASSOCIATION, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4443. Complaint, Jan. 3, 1941—Decision, Dec. 8, 1942

Where an Association, originally organized to meet the requirements of the National Industrial Recovery Act; and 15 member corporations, which (1) were engaged in the manufacture and interstate sale and distribution of ordinary nonpatented wire rope, comprising about 80 to 85 percent of the total volume of wire rope produced by them, to distributors and dealers and also direct to users, including various Federal, State, and municipal governmental agencies, at delivered prices; which (2) together did about 85 percent of all such business in the United States, with only two competitors; which (3) were in competition with one another and with the two concerns above referred to, except insofar as such competition had been restricted or forestalled, as below set forth; and which (4) to the extent that they acted collusively and collectively in the pricing and distribution of wire rope in the United States, were in a position to dominate and control prices for the product involved;

Acting concertedly and through their said Association—

- (a) Following the filing of list prices and discounts with the Code Authority under the National Recovery Act—which gradually became uniform, with the consequence that resulting delivered prices on May 27, 1935, the date of the Schechter Supreme Court decision invalidating the Act referred to, were uniform—acquiesced in a practice by three of their smaller manufacturer members under which such manufacturers sold their wire rope at an additional 5 percent chain discount;
- (b) Published, after the adoption of the Code and notwithstanding the rejection by the Administrator of a proposal so to do, their price list schedules, sales terms, and base and chain discounts, with the effect of making in each case complete delivered sales prices;
- (c) Continued, at the time of the adoption of the Code, their practice of quoting and selling only on a delivered zone basis;
- (d) Filed a formula setting forth in detail the method for the order in which base and chain discounts—i. e., respectively, discounts from list prices and special discounts to different classes of customers—were to be applied and the number of decimals to be used in developing net delivered prices, and continued use of said formula after the Schechter decision; and continued also to publish and allow the same chain discounts to all classes of customers except Governmental agencies as were allowed on May 27, 1935;
- (e) From July 13, 1935 on, by common understanding, allowed the Federal Government, in sealed bids, a chain discount which exceeded that published by them on aforesaid date by a uniform amount and which was the same for all with the exception of aforesaid three smaller manufacturers who

allowed a greater discount; and in September, 1935, changed the chain discounts allowed to states and counties—which theretofore differed from those allowed the Federal Government—so that they were the same as the latter; and from time to time, through common agreement, made changes in their method of computing net prices by extending or reducing the number of digits after the decimal point, with result of preventing such purchasers of wire rope as Government agencies from securing the advantages of net prices which were not uniform;

- (f) In March 1937, by agreement, lowered their base discounts on all types of rope in all zones by 5 percent, agreed on the prices and discounts charged on sales by one manufacturer to another, and between June 30 and July 12 advanced their base discounts 5 percent back to the point where they were prior to March 1937;
- (g) Took action among themselves with respect to those of their number who were themselves located on the Pacific Coast, or who had branch offices of representatives there, over a period of years following said Schechter decision, to fix the prices and conditions governing the sale of their products in said territory and to eliminate sales at other than scheduled prices;
- (h) Continued thereafter, as a general practice of each manufacturer, a prior agreement to quote and sell only at delivered prices within their various zones as concertedly proposed in a code submitted for the approval of the Code Administrator but rejected by him;
- (i) Prior to their presentation of a proposed code to the National Industrial Recovery Administration, agreed upon and adopted a uniform list of classes of customers for insertion in the Code, and while such uniform list was not made a part thereof, filed with the Code Authority lists identical with such uniform list, in connection with the filing of their prices under the Code; and subsequent to said Schechter decision, concertedly continued the use thereof;
- (j) Following said decision, continued to file with the Association, in accordance with the provisions of the Code, a complete list of each manufacturer's authorized distributors, which was revised from time to time; and continued to make use of the definition of a distributor as contained in the Code; and
- (k) Published and usually allowed the same chain discounts to their respective distributors and dealers, with the exception of the uniformly larger discounts allowed by the three smaller manufacturers above referred to;

With the result that through publication and allowance of same base discounts within particular zones, and use of same general classification of customers and identical chain discounts for the respective classes, they usually received the same net delivered prices from purchasers within a particular classification such as "distributors," "Governmental agencies," etc., within a zone, which delivered prices bore no relation to the actual freight paid but produced a different mill net return to each manufacturer on sales to customers at different locations within same zone; and

- (l) Inserted in their distributor contracts a provision under which each was to buy its entire requirements from the particular manufacturer by whom the distributor was appointed; and, following the elimination of such a provision, by agreement among themselves, refused to sell distributor of another on any basis other than that of a dealer even though the distributor offered to qualify as distributor of second manufacturer, and mutually agreed that

they would not make a distributor's contract with one who had been appointed by another; and

(m) Agreed that only certain designated towns on the Pacific Coast could be considered as distribution points, and that distributors could not be appointed by any of them at any other point on the Pacific Coast, preventing thereby those who could otherwise qualify but were not located at such points from becoming distributors for any;

Capacity, tendency, and effect of which agreements and practices were to:

1. Bring about and maintain throughout the United States, for any particular delivered price zone, class of customer, and grade and construction, uniformity in delivered prices, terms and conditions of sale for nonpatented wire rope, except for the uniformly lower level of the three smaller manufacturers above referred to;

2. Fix and maintain uniform formulae for determining the order and manner in which base and chain discounts were to be applied to their list prices in arriving at said uniform delivered prices, and bring about and maintain uniformity in said respective discounts by all such manufacturers;

3. Continue the use of territorial delivered price zones throughout the United States, within each of which prices were usually uniform for all customers of a particular class purchasing a particular grade and construction of said product; with result that each of said manufacturers customarily received a greater mill net return within a given zone, after allowing for actual freight, from customers nearer the mill than from those more distant;

4. Continue the use of said zones within the United States whereby customers in competition with one another were charged different delivered zone prices which did not reflect the differences in actual delivery cost;

5. Bring about, and maintain, uniformity in the classification of customers among all of said manufacturers whereby they published and received uniform delivered prices from all purchasers belonging to a particular class within a particular zone, on sales of any particular grade or construction;

6. Fix and maintain among them a uniform definition of a distributor;

7. Restrain any manufacturer from making a distributor's contract with another's distributor; and

8. Restrain the appointment by any of them of distributors at Pacific Coast points not designated, by agreement among them, as distribution points:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and of said manufacturers' competitors; had a dangerous tendency to, and did, hinder and prevent competition between and among them in the sale and distribution of said product in commerce; unreasonably restrained trade therein; and constituted unfair methods of competition in commerce.

Mr. Fletcher G. Cohn for the Commission.

Morelock & Lamb, of Washington, D. C., for The Wire Rope & Strand Manufacturers Ass'n, Inc., and George P. Lamb.

Feldman, Kittelle, Campbell & Ewing, of Washington, D. C., for Harry J. Leschen, George S. Whyte, American Chain and Cable Co., Inc., Broderick & Bascom Rope Co., E. H. Edwards Co., A. Leschen & Sons Rope Co., MacWhyte Co., Rochester Ropes, Inc., John A.

Roebling's Sons Co., Union Wire Rope Corp., The Upson-Walton Co., Wickwire Spencer Steel Co., Wire Rope Corporation of America, Inc.; and, along with *Salisbury, Robinson & Himrod*, of Los Angeles, Calif., for Pacific Wire Rope Co., and with *Jones & Bronson*, of Seattle, Wash., for Wire Rope Manufacturing & Equipment Co.

Squire, Sanders & Dempsey and *Mr. J. H. Kerr*, of Cleveland, Ohio, *Willkie, Owen, Otis, Farr & Gallagher* and *White & Case*, of New York City, and *Mr. B. L. Rawlins, Jr.*, of Pittsburgh, Pa., for The American Steel and Wire Co. of N. J.

Cravath, DeGersdorff, Swaine & Wood, of New York City, for Bethlehem Steel Co.

Mr. Walter Shelton, of San Francisco, Calif., and *Willkie, Owen, Otis, Farr & Gallagher* and *White & Case*, of New York City, for Columbia Steel 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 parties named in the caption hereof, and more particularly described and referred to hereinafter 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 Wire Rope & Strand Manufacturers Association, Inc., is a membership 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 627 Shoreham Building, Washington, D. C.

Respondent, Harry J. Leschen, is the president of, respondent, The Wire Rope & Strand Manufacturers Association, Inc., and is also president of respondent, A. Leschen & Sons Rope Co., 5909 Kennerly Avenue, St. Louis, Mo.

Respondent, George S. Whyte, is chairman of the board of respondent, The Wire Rope & Strand Manufacturers Association, Inc., and is also chairman of the board of the MacWhyte Co., 2906 Fourteenth Avenue, Kenosha, Wis.

Respondent, George P. Lamb, is executive secretary of respondent, The Wire Rope & Strand Manufacturers Association, Inc., his office being located in the Shoreham Building, Washington, D. C.

Respondent, American Chain and Cable Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State

of New York, with its office and principal place of business located at 230 Park Avenue, New York, N. Y.

Respondent, The American Steel and Wire Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Rockefeller Building, Cleveland, Ohio.

Respondent, the Bethlehem Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pa.

Respondent, Broderick & Bascom Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 4203 North Union Boulevard, St. Louis, Mo.

Respondent, Columbia Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Russ Building, San Francisco, Calif.

Respondent, E. H. Edwards Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 225 Bush Street, San Francisco, Calif.

Respondent, A. Leschen & Sons Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 5909 Kennerly Avenue, St. Louis, Mo.

Respondent, MacWhyte Co., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2906 Fourteenth Avenue, Kenosha, Wis.

Respondent, Pacific Wire Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 1840 East Fifteenth Street, Los Angeles, Calif.

Respondent, Rochester Ropes, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 91 Van Wyck Boulevard, Jamaica, Long Island, N. Y.

Respondent, John A. Roebling's Sons Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 630 South Broad Street, Trenton, N. J.

Respondent, Union Wire Rope Corp., 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 21st Street and Manchester Avenue, Kansas City, Mo.

Respondent, Upson-Walton Co., is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1310 West 11th Street, Cleveland, Ohio.

Respondent, Wickwire Spencer Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 500 Fifth Avenue, New York, N. Y.

Respondent, Wire Rope Corporation of America, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 464 Congress Avenue, New Haven, Conn.

Respondent, Wire Rope Manufacturing & Equipment Co., is a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 322 First Avenue, South, Seattle, Wash.

PAR. 2. Respondent, The Wire Rope & Strand Manufacturers Association, Inc., hereinafter referred to as "respondent Association" was originally organized to meet the requirements set out in section 3 (a) of the National Industrial Recovery Act. After this act was declared unconstitutional by the Supreme Court in the Schechter case on May 27, 1935, respondent Association continued to function, and still is in operation. Its membership is composed of the respondent corporations herein, who are hereinafter referred to as "respondent Members," all of whom are engaged in the manufacture, sale, and distribution of wire rope throughout the United States. The Board of Directors of respondent Association is composed of one representative from each of the sixteen respondent members.

PAR. 3. Respondents, Harry J. Leschen, George S. Whythe, and George P. Lamb, as president, chairman of the board, and executive secretary, respectively, or respondent Association, control, supervise, and direct the policies and activities of said respondent Association.

PAR. 4. Wire rope is manufactured from fine steel wires which are woven into what is known as a strand; the strands are interwoven and twisted together around a core, thus producing a wire rope. Practically all building elevators are operated by the use of such rope, as are also power shovels, cranes, logging machines, and other species of equipment used in pulling, lifting, or supporting heavy loads. The wire rope is made in many sizes, varying from

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that used for airplane control wires to those employed in supporting suspension bridges. While there are two types of wire ropes most commonly produced, ordinary and preformed, this proceeding is concerned with the former, only, which comprises from approximately 80 to 85 percent of the total volume of wire rope produced by respondent Members. Over a long period of years ordinary wire rope has been sold to distributors and dealers and also to the users thereof, including various governmental agencies, by the respondent Members, at list prices less basic and chain discounts.

PAR. 5. Respondent Members manufacture, sell and distribute approximately 95 percent of all of the wire rope manufactured, sold and distributed in the United States. There is but one other manufacturer in the United States which produces this product, and it did not begin production until the latter part of 1938. Respondent Members sell the wire rope manufactured by them largely through distributors or dealers. On federal, State, and municipal invitations to bid, respondent Members, and also distributors selling their products usually participate in bidding pursuant to said invitations. To the extent that respondent Members act collusively and collectively in the pricing and distribution of wire rope in the United States, they are in a position to dominate and control the prices, at which this product must be purchased by the distributors, dealers, and users thereof, including federal, State and municipal agencies.

PAR. 6. In the course and conduct of their respective businesses, each of respondent Members sells and distributes the wire rope manufactured by it to the purchasers thereof located in the various States of the United States and in the District of Columbia, and in connection with said sales, transports or causes to be transported said product to such purchasers located in the various States of the United States, other than the States of the origin of said shipments, and in the District of Columbia. All of respondent Members have maintained, and still do maintain a regular current of trade in wire rope in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. Each of respondent Members has been and is, in competition with one or more of the other respondent Members in making or seeking to make sales in commerce between and among the various States of the United States and in the District of Columbia, of wire rope which they manufacture, except insofar as said competition has been hindered, lessened, restricted, or forestalled, by the understanding, agreement, combination, or conspiracy and the acts, practices, and thing done in pursuance and in furtherance thereof, as hereinafter set forth.

PAR. 8. For more than 4 years last past, respondent Members, acting between and among themselves, through and by means of respondent Association, or through and by means of respondents, Leschen, Whyte, and Lamb, while these three were acting in their official positions with respondent Association, or by other means and methods, have entered into, and thereafter engaged in and carried out, and are still engaged in and carrying out, a wrongful and unlawful understanding, agreement, combination, and conspiracy, for the purpose and with the effect of substantially restricting, suppressing, eliminating, and frustrating actual and potential competition as to price, and otherwise, in the sale and distribution of wire rope in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. Pursuant to said understanding, agreement, combination, and conspiracy, and in furtherance thereof, said respondent Members, acting in the manner and by the methods herein set forth, have done and performed, and still do and perform, among other acts, practices, and things, the following:

1. Agreed to fix and maintain, and have fixed and maintained, uniform delivered prices, terms, and conditions for the sale of wire rope in the United States to the dealers and distributors thereof and to certain users thereof, including various governmental agencies.

2. Continued, in effect, by agreement, understanding, and concerted action among themselves, a price-fixing formula, whereby uniform delivered prices for the sale of wire rope manufactured by them, are fixed and maintained, which price-fixing formula was embodied in an expressed agreement among said respondent Members during the period that a Code for the industry to which respondent Members belonged was in operation under the National Industrial Recovery Act.

3. Agreed to adopt, and have adopted and maintained, a uniform method of computing net delivered prices for wire rope sold by, respondent Members throughout the United States.

4. Agreed to adopt, and have adopted and maintained, a system of delivered prices designed to prevent, and which does prevent, the differences in the cost of freight delivery between the respective places of business of respondent Members and those of the intended purchasers of wire rope manufactured by respondent Members, from creating any advantage or disadvantage to said purchasers in delivery costs, without regard to which of respondent Members such purchasers might desire to purchase said rope from; such system of identical delivered prices is predicated upon the use by respondent Members of so-called basing points whereby all delivered prices are calculated

as though shipments were made from a single point or points having a common freight destination.

5. Agreed to adopt and have adopted and maintained, a plan whereby the United States is divided into certain basing point areas so that all purchasers within a given area, regardless of the distance of the place of business of said purchaser from the place of business of a respondent Member, receive the same delivered prices on wire rope manufactured by respondent Members.

6. Agreed to require, and to require, the distributors to whom respondent Members sell the wire rope manufactured by them, to submit prices for the resale of same according to a price formula agreed upon and set up by respondent Members.

7. Agreed to adopt, and have adopted and maintained, a uniform method of determining the basic and chain discounts and the amount thereof to be granted by respondent Members to the purchasers from them of wire rope manufactured and sold, as aforesaid, by said respondent Members.

8. Agreed to change, and have changed, simultaneously the basic discounts and the amounts thereof at which respondent Members sell to purchasers from them of the wire rope manufactured by said respondent Members.

9. Agreed to define, and have defined, what constitutes an acceptable or recognized distributor of wire rope.

10. Agreed to enter into, and have entered into, uniform written contracts with their respective distributors.

11. Agreed to organize, and have organized, a Distributors Committee in respondent Association to classify distributors of wire rope throughout the United States.

12. Agreed to file, and have filed, with respondent Association, acting through and by means of respondent, George P. Lamb, as executive secretary of respondent Association, the names of all their respective wire rope distributors.

13. Agreed to authorize, and have authorized, said respondent, George P. Lamb, acting as executive secretary of respondent Association, to compile a master list showing all the wire rope distributors of all the respondent Members.

14. Agreed to authorize, and have authorized, the said respondent, George P. Lamb, acting as executive secretary of respondent Association, to expunge from said compiled list, all companies or firms who do not come within the definition of a distributor, as agreed upon and adopted by respondent Members.

15. Agreed to circulate, and have circulated, through and by means of respondent Association and respondent, George P. Lamb, acting

as executive secretary of respondent Association, lists of each respondent Member's distributors to all the other respondent Members, so that each respondent Member knows precisely with what manufacturer each distributor has a distributing contract for wire rope.

16. Agreed that each respondent Member grant to his distributors a special chain discount, which is not granted to other dealers in wire rope, to whom he sells, and who, although they may meet the requirements of the definition of a wire rope distributor as agreed upon and adopted by respondent Members, nevertheless do not have a distributor's contract with this particular respondent Member.

17. Agreed to refrain from soliciting, or entering into a contract with, and have refrained from soliciting or entering into contracts with, any distributors who already had contracted as such with another respondent Member.

18. Agreed not to grant, and do not grant, to distributors who have a distributing contract with another respondent Member, the same or similar discounts which they grant to their own distributors.

19. Agreed to include, and did include, in a uniform contract which all the respondent Members entered into with their respective distributors, a provision which forbade such distributors from selling any wire rope other than that made by the particular respondent Member with whom said distributor had a distributing contract.

PAR. 10. In order to effectuate the agreements and acts and practices performed thereunder, as hereinbefore set forth in the preceding paragraph, which agreements and acts have been, and are, made pursuant to, and in furtherance of, the agreement, understanding, combination, and conspiracy hereinbefore described in paragraph 8, respondent Members, also, among other acts and things have agreed:

(1) To hold, and have held, frequent meetings under the auspices and supervision of respondent Association and respondents, Harry J. Leschen, George S. Whyte, and George P. Lamb, acting in their respective positions for respondent Association.

2. To supervise and investigate, and do supervise and investigate, through and by means of respondent Association and said respondents, Leschen Whyte, and Lamb, acting in their respective official positions with respondent Association, and by other means and methods, the fulfillment and enforcement of the agreements and acts performed pursuant thereto and in furtherance thereof.

3. To act, and do act, concertedly to maintain said agreements.

4. To coercively require, and do coercively require, recalcitrant manufacturers, distributors, and dealers of wire rope, to recognize and conform to such agreements.

5. To use, have used, and are still using, other unlawful means and methods in restricting, restraining, suppressing, preventing, and forestalling actual and potential competition in the sale and distribution of wire rope in the United States.

PAR. 11. Most of the acts, things, practices, and agreements referred to in the two preceding paragraphs were in effect during the period covered by the Code, for the particular industry to which respondent Members belonged under the National Industrial Recovery Act, and have continued in effect, pursuant to understanding, agreement, combination, and conspiracy between and among respondent Members.

PAR. 12. As an incident to, and a necessary result of, respondent Members' said agreement to use, and their use of, the basing point system of delivered prices, so as to make delivered prices identical within certain areas defined by respondent Members, through agreement and understanding among said respondent Members, notwithstanding differences in the actual freight from their respective places of business to various destinations within the same area, respondent Members have habitually and systematically demanded, charged, accepted, and received within the same basing point area, and in other basing point areas, larger sums per unit of product from their customers located near their respective places of business than from their other customers located at greater distances within the same basing point area, and have thereby forced their nearer customers to pay more to respondent Members for the wire rope manufactured by said respondents, in order that the more distant customers within the same area might pay less, thus depriving the nearby customers of any price advantage which they should have by reason of their proximity to the places of production.

PAR. 13. Respondent Association and respondents, Leschen, Whyte, and Lamb, while acting in their respective offices in respondent Association, aided, abetted, furthered, cooperated with, and were instrumentalities of, the understanding, agreement, combination, and conspiracy hereinbefore set forth, and they also directly or indirectly participated in the performance of at least some of the acts and practices done pursuant to, and in furtherance of, said understanding, agreement, combination, and conspiracy, hereinbefore set out.

PAR. 14. Each of respondent Members has acted, and still acts, in concert and cooperation with one or more of the other respondent Members, by means of, and through, respondent Association, respondents, Leschen, Whyte, and Lamb, acting in their official positions with respondent Association, or by, and through other means and methods, in doing and performing the acts, practices, and agreements hereinbefore set forth.

PAR. 15. The acts, practices, and agreements of the respondents, as herein alleged, are all to the prejudice of actual and potential competitors of respondent manufacturers and of the public; have a dangerous tendency to, and have actually hindered and prevented competition in the sale of wire rope in commerce, within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in said product; have a dangerous tendency to create in respondents a monopoly in the sale and distribution of said product, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 3, 1941, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. All the respondents filed answers to the complaint. Thereafter, a stipulation was entered into by all of the respondents herein, except Bethlehem Steel Co., whereby it was stipulated and agreed that a statement of facts executed by such respondents and by W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding as to such respondents and in lieu of testimony in support of or in opposition to the charges stated in the complaint, 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 (the parties reserving, however, the right to file briefs with the Commission). Subsequently, the proceeding regularly came on for final hearing before the Commission on the complaint, answers, stipulation (the stipulation having been approved, accepted, and filed), and brief on behalf of respondent, The Wire Rope & Strand Manufacturers Association, Inc. (no brief having been filed on behalf of any of the other respondents); and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Wire Rope & Strand Manufacturers Association, Inc., herein sometimes referred to as "respondent Association" and as "the Association," is a membership corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office located in the Shoreham Building, Washington, D. C.

Respondent, Harry J. Leschen (now deceased), was the president of respondent Association from 1933 until February 13, 1941, and was also president of respondent, A. Leschen & Sons Rope Co., 5909 Kennerly Avenue, St. Louis, Mo.

Respondent, George S. Whyte, was chairman of the board of respondent Association from 1933 until May 1940, and is also chairman of the board of respondent, MacWhyte Co., 2906 Fourteenth Avenue, Kenosha, Wis.

Respondent, George P. Lamb, is executive secretary and counsel of respondent Association, with his office located in the Shoreham Building, Washington, D. C., which is the same address as that of respondent Association.

Respondent, American Chain and Cable Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 230 Park Avenue, New York, N. Y.

Respondent, The American Steel and Wire Co., of New Jersey, (referred to in the complaint as The American Steel and Wire Company), is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located in the Rockefeller Building, Cleveland, Ohio.

Respondent, Bethlehem Steel Co., (referred to in the complaint as The Bethlehem Steel Company), 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 701 East Third Street, Bethlehem, Pa.

Respondent, Broderick & Bascom Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 4203 North Union Boulevard, St. Louis, Mo.

Respondent, Columbia Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in the Russ Building, San Francisco, Calif. This respondent is affiliated with

respondent, The American Steel and Wire Co. of N. J., both of these respondents being subsidiaries of United States Steel Corporation.

Respondent, E. H. Edwards Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 225 Bush Street, San Francisco, Calif.

Respondent, A. Leschen & Sons Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 5909 Kennerly Avenue, St. Louis, Mo.

Respondent, MacWhyte Co., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2906 Fourteenth Avenue, Kenosha, Wis.

Respondent, Pacific Wire Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 1840 East Fifteenth Street, Los Angeles, Calif.

Respondent, Rochester Ropes, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 91 Van Wyck Boulevard, Jamaica, Long Island, N. Y.

Respondent, John A. Roebling's Sons Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 640 South Broad Street, (referred to in the complaint as 630 South Broad Street), Trenton, N. J.

Respondent, Union Wire Rope Corp., 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 Twenty-first Street and Manchester Avenue, Kansas City, Mo.

Respondent, The Upson-Walton Co., (referred to in the complaint as Upson-Walton Company), is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 740 Superior Avenue W., (referred to in the complaint as 1310 West Eleventh Street), Cleveland, Ohio.

Respondent, Wickwire Spencer Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 500 Fifth Avenue, New York, N. Y.

Respondent, Wire Rope Corporation of America, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 464 Congress Avenue, New Haven, Conn.

Respondent, Wire Rope Manufacturing & Equipment Co., is a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 322 First Avenue, South, Seattle, Wash.

PAR. 2. The Commission having concluded that the complaint should be dismissed as to respondents, Harry J. Leschen, George S. Whyte, George P. Lamb, and Bethlehem Steel Co., the terms "respondents," "respondent corporations," and "respondent manufacturers," as used hereinafter, will not include these respondents unless the contrary is indicated.

PAR. 3. Respondent Association was originally organized to meet the requirements set out in section 3 (a) of the National Industrial Recovery Act. After this Act was declared unconstitutional by the Supreme Court of the United States on May 27, 1935, in *Schechter Poultry Corp. v. United States*, 295 U. S. 495, the Association continued to function and is still in operation. All of the respondent corporations are members of the Association except respondent, Pacific Wire Rope Co., which was a member until June 4, 1937, when it resigned therefrom. It has not been a member since that date. The respondent corporations are engaged in the manufacture of wire rope and in the sale and distribution thereof throughout the United States.

PAR. 4. Wire rope is manufactured from relatively small section wires, either ferrous or nonferrous, often in combination with hard fibers or cotton. The wires are laid together in definite patterns to form strands, which are then laid together in definite patterns around centers made from fiber, cotton, wire strand, or wire rope, to thus form wire rope.

Practically all building elevators are operated by the use of such rope, as are also power shovels, cranes, logging machines, and other species of equipment used in pulling, lifting or supporting heavy loads. The wire rope is made in many sizes, varying from that used for airplane control wire to those employed in supporting suspension bridges. While there are two types of wire ropes most commonly produced, ordinary (nonpatented) and preformed, this proceeding is concerned only with the former, which comprises approximately 80 to 85 percent of the total volume of wire rope produced by respondent manufacturers. Over a long period of years, ordinary or nonpatented wire rope has been sold to distributors and dealers, and also directly to the

users thereof, including various governmental agencies, by the respondent manufacturers at delivered prices. Such rope is usually sold to various governmental agencies at net prices.

PAR. 5. The respondent manufacturers manufacture, sell, and distribute approximately 85 percent of all of the wire rope manufactured, sold, and distributed in the United States. In addition to such respondents and respondent, Bethlehem Steel Co., there was at the time of the filing of the complaint herein but one other manufacturer in the United States which produced this product, and this manufacturer did not begin production until the latter part of 1938. The respondent manufacturers sell the wire rope manufactured by them largely to or through distributors or to dealers. On federal, State, and municipal invitations to bid, all of such respondents, and also the distributors selling their products, at one time or another have bid or do bid pursuant to such invitations, usually by means of sealed bids. To the extent that such respondents act collusively and collectively in the pricing and distribution of wire rope in the United States, they are in a position to dominate and control the prices at which this product must be purchased by the distributors, dealers, and users thereof, including federal, State and municipal agencies.

PAR. 6. In the course and conduct of their respective businesses, each of the respondent manufacturers sells and distributes the wire rope manufactured by it to the purchasers thereof located in various States of the United States, and, in the case of some of such respondents, also to purchasers located in the District of Columbia. In connection with such sales, these respondents transport their product or cause it to be transported to such purchasers located in various States of the United States other than the States of origin of such shipments, and, in the case of some of the respondents, also to purchasers located in the District of Columbia. All of such respondents maintain and have maintained a regular current of trade in their product in commerce among and between the various States of the United States, or some of them, and, in the case of some of the respondents, also in the District of Columbia.

PAR. 7. Each of the respondent manufacturers has been and is in competition with one or more of the other respondent manufacturers, and with the two other concerns referred to in paragraph 5, in making or seeking to make sales of its wire rope in commerce among and between the various States of the United States and in the District of Columbia, except insofar as such competition has been hindered, lessened, restricted, or forestalled by the understandings, agreements, combinations, or conspiracies, and the acts, practices, and things done in pursuance and in furtherance thereof, as hereinafter set forth.

PAR. 8. During the years 1930 through 1933, the sealed bids submitted by respondent manufacturers or their respective distributors or dealers to various governmental agencies generally showed a variance in price. Before the adoption of the code hereinafter mentioned in paragraph 9, generally there was no uniformity in the classification of their respective customers by such respondents. As a result, the actual prices at which these various respondents offered to sell or sold their wire rope to the same customer varied considerably.

PAR. 9. On May 24, 1934, the Supplementary Code of Fair Competition for The Wire Rope & Strand Manufacturing Industry (which industry was a division of the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry), herein referred to as "the Code," was approved pursuant to the National Industrial Recovery Act.

This code under Article V, Price List Schedules and Discounts, provided among other things that:

Each member * * * shall, within 10 days after the effective date of this * * * Code, file with the Secretary of the Supplementary Code Authority its price list schedules and/or sales terms and/or discount sheets, which price list schedules and/or sales terms and/or discounts shall become effective on the date of filing. The Secretary of the * * * Code Authority shall immediately send copies of such filings to all known members of the industry. No member of the industry shall make any change in the price list schedules and/or sales terms and/or discounts so filed except as provided for in Section 3. * * *

Section 3 of Article V provided that:

Revised price list schedules and/or sales terms and/or discount sheets may be filed from time to time with the Secretary of the Supplementary Code Authority by any member of the industry, to become effective ten business days after actual receipt by the Supplementary Code Authority. Copies of such revised price list schedules and/or sales terms and/or discount sheets with notice of the effective date specified, shall be immediately sent by the Secretary to all known members of the industry who are cooperating in this Supplementary Code, any of whom may file, if he so desires, to become effective upon a date when the revised price list schedules and/or sales terms and/or discount sheets first filed shall go into effect, revisions of his price list schedules and/or sales terms and/or discount sheets establishing price list schedules and/or sales terms and/or discounts not lower than those established in revised price list schedules and/or sales terms and/or discount sheets first filed. * * *

(By order approving the Code, the foregoing provision for a waiting period of 10 days was stayed and never became effective.)

Section 5 of Article V provided further that:

No member of the industry shall sell or contract to sell, directly or indirectly, by any means whatsoever, any of his products coming under this Supplementary Code at a price other than shown in the price list schedules and discount sheets filed by that member * * *

PAR. 10. Pursuant to these provisions of the Code, all of the respondent manufacturers filed their list prices and discounts with the Code Authority. For many years the wire rope industry had used two sets of discounts, one called base discounts, the other (additional discounts) commonly known as chain discounts. The base discounts for each standard grade and construction of wire rope vary according to the geographic location of the customer, the chain discounts vary according to the classification of the customer. During the filing of prices under the Code, these list prices, discounts, and classifications, and usually the resulting delivered prices of the respondent manufacturers from time to time became uniform, and on May 27, 1935, were uniform except as to the discounts of respondent, Wire Rope Corporation of America, Inc., respondent, Rochester Ropes, Inc. (then named New York Cordage and Cable Co.), and the predecessor of respondent, The Upson-Walton Co., three of the smaller manufacturers of wire rope. These three concerns, with the common knowledge of the other respondent manufacturers, during the existence of the Code Authority customarily sold and still sell wire rope at a 5 percent chain discount in addition to the general discounts allowed by the other respondent manufacturers.

The Commission finds, since all of the other respondent manufacturers have had knowledge that these three smaller manufacturers were selling their products at approximately a 5 percent greater chain discount and have acquiesced in such arrangement, that there has been an understanding, agreement, and combination among all of the respondent manufacturers for these three smaller concerns to grant this higher chain discount.

PAR. 11. Prior to the submission of a code under the provisions of the National Industrial Recovery Act, most but not all of the respondents then manufacturing wire rope published their respective price list schedules, sales terms, and base and chain discounts. In formulating a proposed code, all of the respondent manufacturers agreed to the submission, for the approval of the Administrator, of a code containing the following provision:

In order to bring about fair practices of both consumers and Members of the Industry and to effectuate the provisions of this Supplementary Code, the Members of the Industry agree to the general trade practice of each publishing its own independent price list schedules and/or sales terms and/or base discounts and all discounts to be allowed the various classes of trade, making in each case a complete delivered sales price for all those products coming under this Supplementary Code.

This proposed code was approved by the Administrator, as hereinbefore set out in paragraph nine, but in giving such approval the

Administrator ordered that the above-quoted provision be deleted. However, all of the respondent manufacturers did, after the adoption of the Code, and do publish their price list schedules, sales terms, and base and chain discounts, making in each case complete delivered sales prices.

PAR. 12. At the time of the adoption of the Code, all of the respondent manufacturers continued to quote their respective prices and to sell only on a delivered basis and on a basis of zones, as they had done for many years and as they are still doing. Under this zoning arrangement the United States is divided into six zones, as follows:

1. Eastern Territory: Territory east of the western line of Missouri, Minnesota, Iowa, Arkansas and Louisiana and including points on either bank of the Missouri River between Sioux City, Iowa and Kansas City, Missouri, any point on the West Side—not actually on the bank of the river—shall be considered Western Territory.

2. Western Territory: States of North Dakota, South Dakota, Nebraska, Kansas (excepting points on Missouri River between Sioux City and Kansas City, Missouri), Texas, and Oklahoma.

3. Territory consisting of the States of Wyoming, New Mexico and Colorado.

4. Territory consisting of the States of Montana, east of the 114th meridian, and Utah.

5. Pacific Coast Territory: California, Oregon, Nevada, Washington, Idaho and Montana, west of the 114th meridian, including Missoula, and

6. State of Arizona.

PAR. 13. The respondent manufacturers in September, 1934, all filed under the provisions of the Code hereinbefore quoted in paragraph nine, and likewise employed by common understanding a formula or formulae setting forth in detail the method for the order in which base and chain discounts were to be applied to list prices and the number of decimal places to be used in developing net delivered prices on wire rope sold by such respondents. An example of such a formula reads as follows:

FORMULA TO BE USED IN DEVELOPING NET PRICES ON WIRE ROPE

Figure the discounts from the list in their consecutive order. Extend the figures beyond the decimal point as far as they will go until the final price per foot has been developed. Point off three places on this final price and drop all figures beyond these three places, regardless of their value.

To arrive at the price per 100 feet, multiply the net price per foot by 100.

To arrive at the price per 1000 feet, multiply the net price per foot by 1000.

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Findings

When figuring the total price, drop all figures beyond two figures after the decimal. For example: If the total price figures on the above basis should be \$120.214, the price to be quoted would be \$120.21.

WIRE ROPE CENTER, WIRE CENTER AND GALVANIZED ROPES. Add the necessary extras to the list prices before applying the discounts. Carry out full number of places beyond the decimal point in making these additions.

Following is an illustration of the application of the foregoing rule for establishing the net price in which the Eastern base discount on Plow Steel, with a spread of 10-5-5% has been used:

1" DIAMETER 6.19 PLOW STEEL—HEMP CENTER (Discount 30-10-5-5%)

List		
\$.43		
× .70		(30% discount)
.3010		
— .0301		(10% discount)
.2709		
— 013545		(5% discount)
.257355		
— .01286775		(5% discount)
.244		

RESULT:

.244 Per Foot
24.40 Per 100'.
244.00 Per 1000'.

Subsequent to the decision in the Schechter case, all of the respondent manufacturers, by reason of an agreement or understanding among themselves, have been and are still using the above formula in arriving at net delivered prices.

PAR. 14. The National Industrial Recovery Act was declared unconstitutional by the Supreme Court of the United States in the Schechter case on May 27, 1935. On that date, the Administrator of the National Industrial Recovery Act issued a statement to the public requesting that parties operating under codes should continue to maintain standards set up in the codes for the prevention of dishonest, fraudulent trade practices and unfair competition in overworking and underpaying labor.

On May 29, 1935, the president of respondent Association, after wiring the respondent manufacturers, summarized their replies in the following wire to the executive secretary of the Association:

All members Industry, including Strand Manufacturers have agreed to cooperate in maintenance of present standards as set up in Code.

On May 28 or 29, 1935, respondents, John A. Roebling's Sons Co., American Chain and Cable Co., Inc., A Leschen & Sons Rope Co., and Broderick & Bascom Rope Co. all wrote or wired their respective branch offices or distributors to the effect that they were continuing to operate under the Code, respondent, Broderick & Bascom Rope Co. stating in its circular letter to its distributors that:

Notwithstanding the recent Supreme Court decision on the NRA, we are confident that the Wire Rope Industry will continue to operate exactly as they have during the past several months.

The following appears in the minutes of the meeting of respondent Association held on June 11-12, 1935:

It was stated that the purpose of this meeting was to consider the position of the Association relative to the provisions of the Wire Rope Code in the light of the recent Supreme Court decision on the unconstitutionality of the National Recovery Act. The President stated that he had contacted every member of the Wire Rope Industry as well as the Strand manufacturers, by wire with the result that a feeling of cooperation was evidenced by the replies. Commenting upon these replies, the President stated, that they indicated that the Wire Rope Industry would be able to continue successfully because of the fine spirit of cooperation, evidenced thereby.

At this meeting the respondent manufacturers, by the unanimous vote of those present, decided upon the following procedure:

1. Each manufacturer should file with the office of the Executive Secretary his price lists and discount sheets on a purely voluntary basis to be distributed to the members of the industry, these prices to become effective immediately and to be refiled in accordance with the volition of each individual member. This procedure will be followed until further notification to the members of the industry to the contrary. [Subsequent to May 27, 1935, respondent manufacturers did not file prices with respondent Association or with George P. Lamb, or with any other officer of respondent Association, with the exception of a few instances immediately following the decision in the Schechter case.]

2. Each member of the Association shall continue to file his changes in distributors as has been done in the past.

3. The fair trade practices sections of both the basic code and the supplementary code shall be observed.

PAR. 15. Subsequent to the decision in the Schechter case, each of the respondent manufacturers knew and understood that all of them were publishing and usually allowing the same chain discounts to dealers, distributors, and all other classes of customers except federal and other governmental agencies, as were published and usually allowed on May 27, 1935; and by agreement and understanding among themselves, these respondents have continued to publish and usually allow such uniform chain discounts.

On May 27, 1935, the published chain discounts allowed to the Federal Government by the respondent manufacturers were 10-5-5-10

percent, with the exception of those allowed by the three smaller manufacturers mentioned in paragraph ten and by respondent, Pacific Wire Rope Co., which on that date were 10-5-10-10-10 percent.

Notwithstanding their published chain discounts to the Federal Government, the respondent manufacturers on July 13, 1935, in sealed bids, all allowed the Federal Government a chain discount of 10-5-10-10-10 percent, with the exception of the three smaller manufacturers hereinbefore mentioned in paragraph 10, who allowed greater discounts. Subsequently, all of these respondents (except the three smaller concerns mentioned in paragraph 10 and the Pacific Wire Rope Co., all four of whom already had a published chain discount to the Federal Government of 10-5-10-10-10 percent), published on various dates and continued usually to allow the chain discounts of 10-5-10-10-10 percent to the Federal Government, and from November 1937, to date these have remained, by common understanding and agreement, the chain discounts published and usually allowed to the Federal Government by all of the respondent manufacturers.

Prior to September, 1935, the chain discounts allowed by the respondent manufacturers to States and counties were different from those allowed by them to the Federal Government, and in or about that month such respondents agreed that on all bids to States or counties they would allow the same chain discounts as to the Federal Government.

On December 31, 1935, respondent, MacWhyte Co., in a letter to its distributors noted that examination into many reported discrepancies in quoted prices by the respondent manufacturers revealed a surprising uniformity in quotation, and that "The deviations from the prices that were set up under the Code when it was effective have been continued (sic) so universally that it is almost an exact truth to say that no deviation at all has been made except possibly as the result of an accident or mistake." The Commission finds from the context of this quotation that the word "continued" was intended to be "discontinued," so that the quotation should read:

The deviations from the prices that were set up under the Code when it was effective have been *discontinued* so universally that it is almost an exact truth to say that no deviation at all has been made except possibly as the result of an accident or mistake.

PAR. 16. On December 5, 1935, the principal office of respondent, American Chain and Cable Co., Inc., notified its branches by circular letter to increase their price on a certain type of wire rope to become effective January 1, 1936. Respondent, MacWhyte Co., announced the same change on December 13, respondent, The American Steel and Wire Co. of New Jersey, on December 17, respondent, John

A. Roebling's Sons Co., on December 18, respondent, A. Leschen & Sons Rope Co., on December 19, and respondent, Broderick & Bascom Rope Co., on December 26, all to become effective on January 1, 1936. The Commission finds that these price changes were the result of an agreement among the respondent manufacturers.

PAR. 17. On December 13, 1935, respondent, MacWhyte Co., announced a change in its method of computing net prices to various governmental agencies by extending the number of decimal places from three to four in the formula described in paragraph 13, to become effective January 1, 1936. Respondent, John A. Roebling's Sons Co., announced the same change on December 18, respondent, A. Leschen & Sons Rope Co., on December 23, respondent, American Chain and Cable Co., Inc., on December 24, and respondent, Broderick & Bascom Rope Co., on December 26, all to become effective on January 1, 1936.

On February 12, 1936, respondent, MacWhyte Co., announced a change in its method of computing net prices, the number of decimal places being reduced from four back to three, effective at once. Respondent, American Chain and Cable Co., and A. Leschen & Sons Rope Co., announced the same change on February 13, respondent, The American Steel and Wire Co. of New Jersey, on February 14, respondent, John A. Roebling's Sons Co., on February 18, and respondent, Broderick & Bascom Rope Co., on February 26, all to become effective at once except that of John A. Roebling's Sons Co., which was retroactive to February 13. By March, 1936, all of the respondent manufacturers were quoting net prices to governmental agencies which were arrived at by pointing off three places to the right of the decimal point.

In many instances, sealed bids are won by a difference of a few cents or fractions of a cent per unit.

The Commission finds that these changes in the method of computing net prices by the retention or elimination of figures or digits after the decimal point were made as a result of an agreement, understanding, and combination between and among the respondent manufacturers, and that the result was and is to prevent purchasers of wire rope, such as governmental agencies, from securing the advantages of having these respondents quote and sell at net prices which are not uniform.

PAR. 18. In March 1937, the respondent manufacturers lowered their base discounts on all types of rope in all zones by five percentage points, all of such respondents making the change at approximately the same date.

PAR. 19. On July 8, 1937, an officer of one of the respondent manufacturers wrote to one of its branches that there was an agreement among the respondent manufacturers that the price charged on sales by one such manufacturer to another of list less standard base less 10-5-10-10-10 percent would be adhered to.

PAR. 20. On March 26, 1938, an officer of one of the respondent manufacturers wrote a representative of such respondent regarding poor business conditions then existing, and among other things stated:

With regard to price cutting, up to the present time this has not been serious. There has been some chiseling going on but it has not been serious enough to have caused any of the wire rope companies to become really excited and disturbed. * * *

PAR. 21. On various dates between June 30 and July 12, 1938, inclusive, all of the respondent manufacturers advanced their base discounts 5 percent, thus returning the base discounts to where they were prior to March 1937.

PAR. 22. The Commission finds from the foregoing facts, that the changes in the base discounts which the respondent manufacturers granted in all zones were the result of an agreement, understanding, and combination between and among such respondents.

PAR. 23. With the exception of respondents, Rochester Ropes, Inc., The Upson-Walton Co., and The American Steel and Wire Co. of New Jersey, all of the respondent manufacturers who are located in the eastern or midwestern parts of the country have branch offices or representatives on the Pacific Coast for the purpose of selling, and who do sell, the wire rope of these respective manufacturers on the Pacific Coast, where are also located respondents, Columbia Steel Co., E. H. Edwards Co., Pacific Wire Rope Co., and Wire Rope Manufacturing & Equipment Co., and a wire rope manufacturing plant of respondent, Broderick & Bascom Rope Co.

In December 1935, when the respondent manufacturers increased their price on a certain type of wire rope, as set forth in paragraph 16 hereof, the Pacific Coast manager of one of these respondents wired the principal office of such respondent that he had confirmed "all Pacific Coast group will put new metallic core prices in effect date mentioned your letter."

In June 1937, there were an unusual number of deviations from their respective published prices in sales on the Pacific Coast by the respondent manufacturers. On June 21, 1937, the vice president of one of such respondents wrote its Pacific Coast representative that he did not think the price disturbance would last much longer, as "at this time there is a conference going on between the parties inter-

ested" and "all manufacturers are hoping that settlement will be reached under whereby they will go back to the new prices that we established under date of March 20" (sic.).

On October 15, 1937, one of the respondent manufacturers wrote another of such respondents that while on September 1, 1937, the first respondent had sold a certain customer off list, "This order was taken during the commotion in the Northwest," and that "However, this is all out and they cannot, under any conditions, purchase from us at anything but the schedule price," and "regardless of what stories people hear we will not deviate from the above."

Representatives of all of the respondent manufacturers except Pacific Wire Rope Co., Columbia Steel Co., Wire Rope Manufacturing & Equipment Co., and American Chain and Cable Co., Inc., were together at White Sulphur Springs, W. Va., during the latter part of September, 1938. Among those present were two representatives of one of such respondents, one of the representatives from the Pacific Coast and the other from the East. On October 10, 1938, the Pacific Coast representative wrote the eastern representative as follows:

The situation is certainly bad and there is no hope for immediate relief unless steps that were taken back at White Sulphur Springs to correct the situation will accomplish results. The gentlemen with whom we discussed this situation at White Sulphur Springs are fully aware of the seriousness of the situation, and I advised you just what the plans are to correct it, and I certainly hope that this will be accomplished in the very near future.

On or about October 27, 1938, all of the respondents selling wire rope on the Pacific Coast increased their respective base discounts two and one-half points, for the Pacific Coast zone only.

On November 1, 1938, one of the respondent manufacturers wrote its Pacific Coast office as follows:

Attached is a complete schedule set up on the new base discounts for the Pacific Coast territory and Arizona.

Confirming my letter of 11-1-38, it is definitely understood that you will notify everyone concerned there will be no deviation whatever in the discounts, as per our printed schedule. This applies to everybody so do not come back and ask if so-and-so or so-and-so are included because they all are definitely included. Do not have the salesmen tell you that someone else is getting a better price and they will have to meet it because we will not listen to any of these stories at all.

Of course, it is possible we may lose some business but just the same we will gain from someone else. So when it is all washed up we will be better off than we were before.

You must definitely adhere to the schedule unless otherwise instructed.

PAR. 24. The Commission finds from the foregoing facts set forth in paragraph 23 that there was an agreement, understanding, and com-

bination between and among the respondent manufacturers whereby the prices and conditions governing the sale of such respondents' products on the Pacific Coast were fixed and determined.

PAR. 25. The present general practice of each of the respondent manufacturers of quoting and selling the wire rope manufactured by it only at delivered prices, which delivered prices are identical within and throughout each of the respective zones hereinbefore outlined in paragraph 12, is the same as the practice of quoting and selling at delivered prices which such respondents agreed to and did include in the proposed provision of the Code hereinbefore quoted in paragraph 11. The Commission finds that these respondents have, by agreement, understanding, and combination between and among themselves, continued, and still do continue, their prior agreement to sell only on this delivered zone price basis. The Commission further finds that the result of selling on such a basis is that all of the respondent manufacturers, although their places of production are scattered throughout the United States, publish and usually allow the same base discounts within a given zone, regardless of where the wire rope is to be delivered within the zone and regardless of the varying delivery costs therein for such rope; that since all of such respondents employ the same general classifications of customers and (with the exception of the three smaller manufacturers mentioned in paragraph 10) publish and usually allow identical chain discounts for their respective classes of customers, all of such respondents (with these exceptions) usually charge and receive the same net delivered prices on all wire rope sold to purchasers thereof belonging to a particular class, i. e., "distributors," "governmental agencies," etc., within any of the common zones set forth in paragraph 12; and that these same delivered prices produce a different mill net return to each of such respondents on sales to its customers at different locations within the same zone, since each respondent's average freight cost factor (which is included in full in its delivered price when it sells other than at a loss, and is included in part in such delivered price when it sells at a loss) bears no relation to the actual freight paid by it on such sales.

PAR. 26. Prior to their presentation of a proposed code to the National Recovery Administration, the respondent manufacturers agreed upon and adopted, for the first time in the industry, a uniform list of classes of customers for insertion as part of the Code. This uniform list was not made a part of the Code, but in connection with the filing of their prices under the Code all of such respondents filed with the Code Authority lists identical with such uniform list. Subsequent to the decision in the Schechter case these respondents have, by

agreement and understanding between and among themselves, continued to use and are still using such uniform list.

PAR. 27. The Code defined a "distributor" and provided that a complete list of each respondent manufacturer's authorized distributors (who, according to the provision of the Code, had to be under a written contract to act as such), as well as all subsequent changes therein, should be filed with the secretary of the Code Authority, who was then required to transmit the composite list of all of such authorized distributors to all of the respondent manufacturers.

Pursuant to the step numbered "2" in the procedure adopted by the respondent manufacturers subsequent to the decision in the Schechter case and set forth in paragraph 14 hereof, such respondents have continued to file their respective lists of distributors with respondent Association, except that respondent, Rochester Ropes, Inc., has not filed any of such lists since June 1939. Upon receipt of these lists of distributors from respondent manufacturers, the Association, through its executive secretary, has caused to be compiled from such lists a master list showing all of the distributors of each of the respondent manufacturers. From time to time the Association has caused distributors' names to be added to and deleted from such master list as information relative thereto has been received from the respective respondent manufacturers; and while the statement of facts executed by the respondents does not expressly so state, the Commission infers from all the circumstances that the secretary of respondent Association has continued to circulate such master list of distributors among the respondent manufacturers.

Subsequent to the decision in the Schechter case the respondent manufacturers, in determining what constitutes a distributor, have by agreement and understanding between and among themselves continued to use and still use the definition of a distributor as contained in the Code.

The chain discounts published and usually allowed by all of the respondent manufacturers to their respective distributors are 10-5-5-10-10 percent and to their respective dealers 10-5-5-10 percent, except that the three smaller manufacturers mentioned in paragraph 10, by agreement, understanding, and combination between them and the other respondent manufacturers, are allowed to and do grant 5 percent additional chain discounts to both of these classes of purchasers.

Through an agreement and understanding between and among themselves, the respondent manufacturers prior to July 1936, inserted in the contracts with their respective appointed distributors a provision which bound each such distributor "to buy its entire

requirements of wire rope" from the particular respondent by whom the distributor was appointed. In July 1936, this clause was eliminated from all of the contracts which these respondents had with their respective appointed distributors, and all of such contracts of such respondents have since contained a provision that each such distributor is a "nonexclusive distributor." However, all of the respondent manufacturers, by agreement and understanding between and among themselves, still refuse to sell distributors appointed by other respondent manufacturers on any basis other than that of a dealer, even though the distributors offer to qualify as such for other respondent manufacturers.

The respondent manufacturers have mutually agreed that one of them will not make or seek to make a distributor's contract with a distributor who has been appointed by and is acting as such for another of them. This agreement in many instances has been carried out by most of these respondents.

PAR. 28. The respondent manufacturers by agreement have designated, with reference to the Pacific Coast, that only certain towns can be considered as distribution points and distributors cannot be appointed by any of such respondents at any other point on the Pacific Coast, thus preventing those who could qualify as distributors under the definition referred to in paragraph 27 but who are not located at such distribution points from becoming distributors for any of such respondents.

PAR. 29. Each of the respondent manufacturers has acted in concert and cooperation with one or more of the other respondent manufacturers in doing the foregoing acts pursuant to and in furtherance of the understandings, agreements, and conspiracies herein described. The Commission is of the further opinion and finds that the respondent Association was the instrumentality through which the aforesaid acts and practices of the respondent manufacturers were carried into effect, and that the Association, acting through its officers and directors, actively cooperated and participated in such understandings, agreements, and conspiracies, and in the acts done pursuant thereto.

PAR. 30. The Commission finds that the capacity, tendency, and effect of the understandings, agreements, combinations, and conspiracies herein described, and of the practices, acts, and things done in pursuance thereof, have been and are:

1. To bring about, continue, and maintain throughout the United States uniformity of delivered prices, terms, and conditions of sale for the sale by the respondent manufacturers of nonpatented wire rope, which prices, terms, and conditions of sale, for any particular territorial delivered price zone, class of customer, and grade and con-

struction of such wire rope are uniform among such respondents except for the three smaller manufacturers mentioned in paragraph 10, and, as to these three respondents, uniformity at a lower level.

2. To fix and maintain uniform formulae among all of the respondent manufacturers with respect to the methods employed by them in determining the order and manner in which base and chain discounts are to be applied to such respondents' list prices and the number of decimal places to be used in arriving at the uniform net delivered prices for wire rope sold by such respondents throughout the United States.

3. To continue the use of territorial delivered price zones throughout the United States, which zones are the same for all of the respondent manufacturers with each zone generally having different delivered prices from all other such zones, and within each of which zones the delivered prices published and usually charged by all of such respondents are uniform (with the exception of the three smaller manufacturers mentioned in paragraph 10, whose prices are uniform at a lower level) to all customers of a particular class purchasing a particular grade and construction of nonpatented wire rope, regardless of the location of such customers within a particular zone, regardless of the location of the respective places of production or distribution of such respondent, and regardless of difference in actual freight or delivery costs from such places of production or distribution to such customers.

4. To result in each of the respondent manufacturers customarily receiving a greater mill net return, after allowing for actual freight, from those of its customers within a given zone who are nearer the mill than from those of its customers within the same zone who are more distant therefrom.

5. To continue the use of the aforesaid zones within the United States whereby purchasers from all of the respondent manufacturers (which purchasers may be in competition with one another but are located in different zones) are charged different delivered zone prices which generally do not reflect the differences in actual delivery costs to such purchasers.

6. To bring about and maintain uniformity in the base and chain discounts which all of the respondent manufacturers publish and usually allow to their respective purchasers, except as to the chain discounts of the three smaller manufacturers mentioned in paragraph 10, as to which there is uniformity at a higher level.

7. To bring about and maintain uniformity in the classifications of customers among all of the respondent manufacturers, with the result that all of such respondents publish and usually charge and receive uniform delivered prices from all purchasers belonging to a

particular class within a particular territorial delivered price zone on sales of any particular grade and construction of nonpatented wire rope, with the exception set forth in subparagraph 1 of this paragraph regarding the three smaller manufacturers.

8. To fix and maintain among the respondents a uniform definition as to what constitutes a distributor of nonpatented wire rope.

9. To restrain any of the respondent manufacturers from making or seeking to make a distributor's contract with any distributor who has been appointed by and is acting as such for another of such respondents.

10. To restrain the appointment by any of the respondent manufacturers of distributors of nonpatented wire rope at such places on the Pacific Coast as have not been designated, by agreement among such respondents, as distribution points.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondent manufacturers' competitors; have a dangerous tendency to and have hindered and prevented competition between and among the respondent manufacturers in the sale and distribution of nonpatented wire rope in commerce, as "commerce" is defined in the Federal Trade Commission Act; have unreasonably restrained trade in such product in such 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 the respondents, brief filed on behalf of respondent, The Wire Rope & Strand Manufacturers Association, Inc., and a stipulation as to the facts entered into between all of the respondents, (except Bethlehem Steel Co., and W. T. Kelley, chief council for the Commission, which provided, among other things, that without further evidence the Commission might issue and serve upon such 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, (except those named in the last paragraph hereof), have violated provisions of the Federal Trade Commission Act:

It is ordered, That respondents, The Wire Rope & Strand Manufacturers Association, Inc., American Chain and Cable Co., Inc.,

The American Steel and Wire Co. of New Jersey, Broderick & Bascom Rope Co., Columbia Steel Company, E. H. Edwards Co., A. Leschen & Sons Rope Co., MacWhyte Co., Pacific Wire Rope Co., Rochester Ropes, Inc., John A. Roebling's Sons Union Wire Rope Corp., The Upson-Walton Co., Wickwire Spencer Steel Co., Wire Rope Corporation of America, Inc., and Wire Rope Manufacturing & Equipment Co., corporations, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of nonpatented wire rope of any type or description, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. Fixing, determining, maintaining, or adhering to prices, terms, or conditions of sale of such wire rope to dealers, distributors, users thereof, including any governmental agency.

2. Adopting, fixing, determining, maintaining, or adhering to any price-fixing formula or formulae for applying discounts of any nature or description, regardless of their designation, to list prices, or for the purpose or with the effect of retaining, eliminating, or interpreting any figures or digits after any decimal point, whereby prices (including net delivered prices) for the sale of such wire rope are or may be fixed, determined, maintained, or adhered to.

3. Establishing, maintaining, or adhering to territorial delivered price zones.

4. Making quotations or sales upon a delivered price basis under a zone system whereby the cost to all customers, or to customers of any particular class or designation, purchasing a particular grade and construction of such wire rope is made identical to all destinations within a particular zone.

5. Adopting, fixing, determining, maintaining, or adhering to the form, amount, or application of base or chain discounts to be allowed, or which may be allowed, by the respondents on purchases of such wire rope.

6. Adopting, fixing, determining, maintaining, or adhering to uniform classifications of customers.

7. Defining what constitutes a distributor of wire rope, where the purpose or effect is or may be to prevent or restrict the selection of distributors.

8. Filing with any association, or with any other agency, the names of respondents' distributors of wire rope.

9. Authorizing the compilation, for circulation among the respondents, of lists showing the names of distributors of any of the respondents.

10. Circulating or attempting to circulate among the respondents, by any means or method, lists showing the names of distributors of any of the respondents.

11. Refusing by any method or in any manner to make a distributor's contract with any person, firm, or corporation who has been appointed a distributor of and is acting as such for another respondent where such person, firm, or corporation possesses the qualifications and is able and willing to perform the functions required of the distributors of the respondent so refusing.

12. Including in or making a part of any contract which respondents have or may enter into with their respective distributors, any provision which forbids or may forbid such a distributor from selling any wire rope other than that manufactured or sold by the particular respondent with whom such distributor has a distributor's contract.

13. Refusing to appoint distributors in any particular locality or localities.

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents, Harry J. Leschen, George S. Whyte, George P. Lamb, and Bethlehem Steel Co.

Complaint

35 F. T. C.

IN THE MATTER OF
JOSEPH COHEN, TRADING AS PRESS RADIO SERVICE
AND AS PRESS SUPPLIES

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

Docket 4783. Complaint, July 14, 1942—Decision, Dec. 8, 1942

Where an individual, engaged in the interstate sale and distribution of printed cards designated by him as "press" cards, automobile "press" tags, and other so-called "press" supplies—

- (a) Represented, through statements in newspapers, periodicals, circulars, leaflets, and letters of general circulation, and in the classified columns of the papers, directly and by implication, that he was affiliated with press associations, newspaper syndicates, or other outlets for amateur writers; and that persons desiring employment in spare time at good pay could obtain the same from him;

The facts being he was not thus affiliated or connected; had no means of assisting amateur writers profitably to dispose of their work; and at no time had any employment of any nature to offer anyone;

- (b) Falsely represented, as aforesaid, that his press cards afforded to amateur and free-lance writers and photographers means of access through police and fire lines and to otherwise inaccessible locations;

The facts being that in cases in which his cards had secured or might secure such access, such had been and would be through deception of police officers and other public officials into the belief that the bearers were properly accredited press representatives; and

- (c) Falsely represented, as aforesaid, that his business had long been nationally and prominently established; that he carried an unlimited stock of press supplies from which all press needs could be furnished; and that his business was headquarters for the Nation's press supplies;

The facts being that his stock in trade, aside from the so-called "press" cards and tags referred to, consisted only of a few other insignificant items in small quantities; and he did not furnish the press generally, or reporters, photographers, or writers, with any of their supplies; and

- (d) Made misleading and deceptive use of trade name "Press Radio Service" to engender false belief that he performed substantial services or functions for the press or radio industry;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false statements were true, thereby causing its purchase 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. R. P. Bellinger for the Commission.

COMPLAINT

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

Trade Commission, having reason to believe that Joseph Cohen, an individual, trading as Press Radio Service and as Press Supplies, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Joseph Cohen, is an individual, trading as Press Radio Service and as Press Supplies, with his principal place of business located at 713 Otis Place NW., Washington, D. C., and having an address for receiving mail at 1934 Eleventh Street NW., Washington, D. C., which is the location of a negro secretarial service bureau.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of selling and distributing printed cards, which he designates as press cards, automobile press tags, designed for attachment to automobile license plates, and other so-called press supplies.

Respondent causes and has caused the said products, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia.

Respondent maintains and, at all times mentioned herein, has maintained a course of trade in said products in commerce 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 said products, the respondent has falsely represented through the use of statements in circulars, pamphlets, magazines, newspapers, and other periodicals having general circulation throughout the various States of the United States that his press card will entitle the holder to gain admittance through police and fire lines and will secure for him the same courtesies and privileges extended regular newspaper correspondents.

Respondent's method of getting into communication with prospective purchasers is to insert advertisements in newspapers, magazines, and other periodicals having general circulation throughout the various States of the United States. Among and typical of the false representations and statements thus used by respondent in circulars, leaflets, letters, newspaper, and magazine advertisements are the following:

The card will get you through police and fire lines and secure for you the same courtesies extended regular correspondents.

Complaint

35 F. T. C.

AMATEUR NEWSPAPER REPORTERS in town, cities, world over; men, women; all ages; good pay; spare-time work. Press Radio Service, 1934 11th Washington, D. C.

PRESS CARDS.

AUTO PRESS TAGS, etc.

Press Supplies, 1934 Eleventh, Washington, D. C.

PRESS RADIO SERVICE HAS FOR LONG BEEN NATIONALLY, PROMINENTLY ESTABLISHED AND SERVES THE FREE-LANCER WITH EXCLUSIVENESS IN QUALITY AND INFORMATION ADVANTAGEOUS TO FINE PRESS REPORTING * * *. REQUEST YOUR NEEDS. WE HAVE IT. OUR STOCKS ARE UNLIMITED AND WE CAN SERVE YOU IN YOUR PRESS SUPPLY NEEDS.

RUSH ALL ORDERS VIA AIR-MAIL ADDRESSED TO CHIEF PRESS SUPPLIES, PRESS RADIO SERVICE, 1934 ELEVENTH STREET, NORTHWEST, WASHINGTON, D. C.

Press Radio Service "Nation's Press Supplies Headquarters" Request complete catalog.

The foregoing and similar advertisements have appeared in many instances in the classified advertising columns of newspapers. In response to inquiries or replies from prospective customers whose interest has been aroused by such advertisements, the respondent sends further advertising literature designed to induce such person to purchase respondent's press cards, automobile press tags, and other so-called press supplies. As a further means of contacting prospective purchasers of his supplies, respondent has also made false and misleading representations in the classified columns of newspapers, indicating that he has employment to offer amateur writers and photographers and can assist them in securing publication of their work.

PAR. 4. Through the use of the aforesaid statements and advertisements, and others of similar import and meaning, not specifically set out herein, the respondent has represented, directly and by implication, that he is affiliated or connected with press associations, newspaper syndicates, or other publications which serve as a market or outlet for the work of prospective amateur writers; that his said press card affords to amateur and free-lance writers and photographers, means of access through police and fire department lines and to otherwise inaccessible locations; that people desiring employment in spare time at good pay could obtain the same from him; that respondent's business has long been nationally and prominently established; that respondent carries an unlimited stock of press supplies from which all press needs can be furnished; that respondent's business is headquarters for the Nation's press supplies and respondent is actually engaged in operating an enterprise which is equipped to, and does, furnish and sell supplies to the press as its primary business activity.

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Complaint

PAR. 5. The aforesaid representations, as well as others of similar import or meaning which are not specifically set out herein, are exaggerated, false, and misleading. In truth and in fact, respondent is neither affiliated nor connected with any press association, newspaper syndicate, or other publication, and the respondent has no means of assisting and does not attempt to assist amateur writers to profitably dispose of their work. Respondent's press card reads substantially as follows:

Officials of the Police
and Fire Departments and to
those whom it may concern

Effective to
December 31, 1942

The Bearer Is An Accredited

PRESS ASSOCIATE

procuring photographs and news for periodicals cooperating in free-lance press service. All courtesies extended will be appreciated. Bearer assumes all risks of injury or accident incident to the use of this card.

Credential

PRESS RADIO SERVICE.

No. -----

Across the face of the cards there appears in large red letters the word "Press." Respondent's press cards ordinarily would not be honored by police or other officers and do not afford means of access for their holders through police and fire department lines and to otherwise inaccessible locations. Where such cards do secure or have secured such access, it is and has been by reason of the police officers and other public officials having been deceived into believing that the bearers were properly accredited representatives of the press. Respondent does not have and has not had at any time employment of any nature to offer anyone, either on a part or full-time basis. Respondent's business is not nationally and prominently established; respondent does not carry an unlimited stock of press supplies from which all press needs can be supplied, but aside from the so-called press cards and press tags mentioned herein, respondent's stock in trade consists of only a few other insignificant items in small quantities; respondent's business is not headquarters for the Nation's press supplies, and respondent does not furnish the press generally or established newspapers or bona fide news reporters, photographers or writers, with any of their supplies.

PAR. 6. Respondent's use of the trade name Press Radio Service and Press Supplies is further misleading and deceptive in that respondent does not operate any press or radio service, and his business

is limited to the sale of the so-called press cards and tags referred to herein, and a few other items of minor importance. The use of these names in connection with the sale of respondent's said products has the tendency and capacity to engender the belief that the said products are furnished to newspapers for the use of their reporters, and that respondent performs substantial services or functions for the press or for the radio industry. In truth and in fact, respondent's said products are not furnished to newspapers for the use of their reporters, nor for any other purpose. Respondent performs no function whatever for the press generally or for the radio industry.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading statements and advertisements has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true, and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said 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 July 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Joseph Cohen, an individual, trading as Press Radio Service and as Press Supplies, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On November 9, 1942, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Joseph Cohen, is an individual, trading as Press Radio Service and as Press Supplies, with his principal place of business located at 713 Otis Place, NW., Washington, D. C.,

and having an address for receiving mail at 1934 Eleventh Street, NW., Washington, D. C., which is the location of a negro secretarial service bureau.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of selling and distributing printed cards which he designates as "press" cards, automobile "press" tags (designed for attachment to automobile license plates), and other so-called "press" supplies. Respondent causes and has caused these products, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent has falsely represented, through the use of statements in circulars, pamphlets, magazines, newspapers, and other periodicals having general circulation throughout the various States of the United States, that respondent's press card will entitle the holder to gain admittance through police and fire lines and will secure for him the same courtesies and privileges extended regular newspaper correspondents.

Respondent's method of getting into communication with prospective purchasers is to insert advertisements in newspapers, magazines, and other periodicals having general circulation throughout the various States of the United States. Among and typical of the false representations and statements thus used by respondent in circulars, leaflets, letters, and newspaper and magazine advertisements are the following:

PRESS CARDS.

The card will get you through police and fire lines and secure for you the same courtesies extended regular correspondents.

AMATEUR NEWSPAPER REPORTERS in town, cities, world over; men, women; all ages; good pay; spare-time work. Press Radio Service, 1934 11th, Washington, D. C.

PRESS RADIO SERVICE HAS FOR LONG BEEN NATIONALLY PROMINENTLY ESTABLISHED AND SERVES THE FREE LANCER WITH EXCLUSIVENESS IN QUALITY AND INFORMATIONS ADVANTAGEOUS TO FINE PRESS REPORTING * * * REQUEST YOUR NEEDS. WE HAVE IT. OUR STOCKS ARE UNLIMITED AND WE CAN SERVE YOU IN YOUR PRESS SUPPLY NEEDS.

RUSH ALL ORDERS VIA AIR-MAIL ADDRESSED TO CHIEF PRESS SUPPLIES, PRESS RADIO SERVICE 1934 ELEVENTH STREET, NORTHWEST WASHINGTON, D. C.

Press Radio Service "Nation's Press Supplies Headquarters" Request complete catalogue.

The foregoing and similar advertisements have appeared in many instances in the classified advertising columns of newspapers. In response to inquiries or replies from prospective customers whose interest has been aroused by such advertisements, the respondent sends further advertising literature designed to induce such person to purchase respondent's press cards, automobile press tags and other so-called press supplies. As a further means of contacting prospective purchasers of his supplies, respondent has also made false and misleading representations in the classified columns of newspapers, indicating that he has employment to offer amateur writers and photographers and can assist them in securing publication of their work.

PAR. 4. Through the use of the foregoing statements and advertisements, and others of similar import and meaning not specifically set out herein, respondent has represented, directly and by implication, that he is affiliated or connected with press associations, newspaper syndicates, or other publications which serve as a market or outlet for the work of amateur writers; that his press card affords to amateur and free lance writers and photographers means of access through police and fire department lines, and to otherwise inaccessible locations; that people desiring employment in spare time at good pay can obtain the same from him; that his business has long been nationally and prominently established; that he carries an unlimited stock of press supplies from which all press needs can be furnished; and that his business is headquarters for the Nation's press supplies.

PAR. 5. The above representations, as well as others of similar import or meaning which are not specifically set out herein, are exaggerated, false, and misleading. In truth and in fact, respondent is neither affiliated nor connected with any press association, newspaper syndicate, or other publication, and respondent has no means of assisting and does not attempt to assist amateur writers to profitably dispose of their work. Respondent's press card reads substantially as follows:

Officials of the Police
and Fire Departments and to
those whom it may concern

Effective to
December 31, 1942

The Bearer Is An Accredited

PRESS ASSOCIATE

procuring photographs and news for periodicals cooperating in free-lance press service. All courtesies extended will be appreciated. Bearer assumes all risks of injury or accident incident to the use of this card.

Credential

PRESS RADIO SERVICE.

No.-----

Across the face of the card there appears in large, red letters the word "Press." Respondent's press cards ordinarily would not be honored by police or other officers, and do not afford means of access for their holders through police and fire department lines and to otherwise inaccessible locations. Where such cards do secure or have secured such access, it is and has been by reason of the police officers and other public officials being or having been deceived into believing that the bearers are or were properly accredited representatives of the press. Respondent does not have and has not had at any time employment of any nature to offer anyone, either on a part or full-time basis. Respondent's business is not nationally and prominently established. Respondent does not carry an unlimited stock of press supplies from which all press need can be supplied, but, aside from the so-called press cards and press tags mentioned herein, his stock in trade consists of only a few other insignificant items in small quantities. Respondent's business is not headquarters for the Nation's press supplies, and he does not furnish the press generally, or established newspapers or bonafide new reporters, photographers, or writers, with any of their supplies.

PAR. 6. Respondent's use of the trade name "Press Radio Service" is further misleading and deceptive in that respondent does not operate any press or radio service. His business is limited to the sale of the so-called press cards and tags referred to herein, and a few other items of minor importance. The use of such name in connection with the sale of respondent's products has the tendency and capacity to engender the belief that respondent performs substantial services or functions for the press or for the radio industry. In truth and in fact, respondent performs no function whatever for the press generally or for the radio industry.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading statements and advertisements has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true, and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Joseph Cohen, individually, and trading as Press Radio Service and as Press Supplies, 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 respondent's so-called press supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "Press Radio Service," or any other name of similar import, to designate or describe respondent's business; or otherwise representing, directly or by implication, that respondent operates or is affiliated or connected with any press or radio service.

2. Selling or distributing so-called press cards purporting to carry any authorization or credentials from respondent which will afford the holders of such cards passage through police or fire lines, or to any other place; or otherwise representing, directly or by implication, that respondent is able to grant such authorization or credentials.

3. Representing, directly or by implication, that respondent is affiliated or connected with the radio industry or with any press association, newspaper syndicate, or publisher; or that respondent is able to offer employment to or obtain employment for writers or reporters, either on a part or full time basis.

4. Representing that respondent's business is nationally or prominently established.

5. Representing that respondent's business is headquarters for the Nation's press supplies, or that respondent's stock of press supplies is unlimited.

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

UNITED STATES MALTSTERS 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 3555. Complaint, Aug. 24, 1938—Decision, Dec. 29, 1942

Where a substantial number of corporations which manufactured more than 65 percent of all the malt made and sold in the United States and engaged in interstate sale thereof, and were, prior to 1930, in price competition with one another and would subsequently have been so but for agreements and practices below set forth; acting through their Association—

(a) Entered into and carried out certain understandings and agreements with intent and effect of fixing and maintaining uniform prices, terms, and conditions of sale in the sale and distribution of malt, and of otherwise restraining and eliminating competition in the sale thereof in commerce; and maintained the prices thus fixed until changed by notice from their Association, as more particularly below set forth; and

Where such corporations, pursuant to said agreements, acting under the direction of a certain firm to which was paid \$30,000 per annum, collected through assessments against each member—

(b) Organized and operated said unincorporated voluntary trade Association, to promote their mutual interests and serve as an instrument for their joint action in restricting and eliminating competition in sale and distribution of malt in commerce; and

Where said Association, directed by aforesaid firm and its business manager and secretary who participated in the regular meetings of its Executive Committee—

(c) Collected and disseminated information as to prices, terms, and conditions of sale, and statistical data used in carrying out said agreements; and

Where its said members—

(d) Agreed, through resolutions passed at the regular meetings of the Association and its Executive Committee, upon various details in connection with the conduct of their respective businesses, and abided by them, including such matters as uniform application of freight rates; uniform reporting of delinquent accounts; grading standards; quotation of prices on delivery or f. o. b. final destination basis only; grading specifications for use where a "guaranty" of specifications was required; refusal of sales to purchasers who would not agree not to resell; use of seller's contracts only; exclusion of sales agents handling domestic malt from sale of imported; the supplying of their current price lists to the Association for distribution; the inclusion with the daily sales reports to members of a record of cancellations of unfilled contracts; and the adoption of a uniform discount of 1½ cent per bushel for cash;

(e) Agreed upon and carried out a method of price reporting under which they daily reported the delivered prices, which they employed at all times, on an "f. o. b. Chicago basis"; whereby the Association and members—by reason

of the Association's daily reports to them, were immediately enabled to determine that prices were at all times identical and uniform for the various grades of malt sold;

- (f) Agreed to and did fix and maintain the delivered price of malt, and accomplished uniformity thereof through use of Chicago as a common basing point, from which freight was calculated irrespective of the fact that the malt plants and most of the members were not there located, but were at various points in the United States with different freight rates to given destinations;
- (g) Adopted and uniformly followed a method of changing the price of malt to their customers, under which any member desiring to deviate from the price quoted, wired or telephoned the secretary of the Association advising him of the new f. o. b. Chicago base price and the effective date thereof; which information the Association's secretary on the same day transmitted to all other members making a similar product by wire or telephone, and to all members not making similar product, by mail; it being the practice of the members, in the event of increase, to give their customers a limited opportunity to place business at the old price and to respect contracts calling for the current and lower price, and, in the case of a decrease, to require conformance to the higher contract prices specified;
- (h) Agreed to and did from time to time furnish their said Association, for distribution to the remaining members, with copies of their price lists which quoted current and future prices on various grades at "f. o. b. Chicago basis"; and submitted to a checking of their books through accountants employed by firm above referred to, which checking showed no deviation in prices charged from those quoted;
- (i) Agreed to, and did, adopt and maintain uniform terms and conditions of sale; and, following a discussion of a cash discount, not theretofore allowed, between a representative of the Brewers Association and their Executive Committee and allowance of a discount of $\frac{1}{2}$ cent per bushel by one of their number, quoted malt on that basis; and
- (j) Did not deviate from such uniform prices, terms, and conditions of sale, notwithstanding fact that, except in the case of unusual and violent market fluctuations, the market price of malt and barley had little or no relation to the price of malt quoted by them; and their varying manufacturing costs, varying prices paid for barley, and varying costs of transportation and of cleaning raw barley, as well as the difference in malt produced by the various manufacturer members, in the absence of any price fixing agreement, would preclude uniformity of price and result in price competition;

With effect of unduly restraining and suppressing competition in the sale and distribution of malt in commerce, and of depriving the public of the full benefit of competition in said commerce between and among such members, and between them and their competitors;

Held, That such acts and practices of said Association and members were all to the prejudice of competitors and of the public; had a dangerous tendency to and did actually suppress and eliminate competition in the sale and distribution of malt in commerce; placed in them the power to control and enhance prices; unreasonably restrained such commerce in malt; and constituted unfair methods of competition in commerce.

Before *Mr. Robert S. Hall* and *Mr. Webster Ballinger*, trial examiners.

Mr. Edward L. Smith for the Commission.

Complaint

Mr. William W. Corlett, of New York City, and *Poppenhusen, Johnston, Thompson & Raymond*, of Chicago, Ill., for respondents; together with *Hubbard, Baker & Rice*, of Chicago, Ill., for respondent Albert Schwill & 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 United States Maltsters Association, Chilton Malting Co., The Columbia Malting Co., Froedtert Grain & Malting Co., Wm. E. Kreiner & Sons, Inc., The Kurth Malting Co., Interior Malt & Grain Co., The Ladish-Stoppenbach Co., George J. Meyer Malt & Grain Corporation, Milwaukee Western Malt Co., Northwestern Malt & Grain Co., The Francis Perot's Sons Malting Co., Rahr Malting Co., H. W. Rickel & Co., L. Rosenheimer Malt & Grain Co., The Konrad Schreier Co., Albert Schwill & Co., Daniel D. Weschler & Sons, Inc., West Bend Malting Co., and Wisconsin Malting 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, United States Maltsters Association, is a voluntary unincorporated association, whose membership is composed of respondents named in paragraph 2 hereof, which firms are engaged in the manufacture and sale of malt. It was organized in 1930 under the name Bureau of Barley and Malt Statistics, its name being changed to its present name on or about August 10, 1933. Its office is in Chicago, Ill.

PAR. 2. The following respondents are corporations with their principal places of business in the cities hereinafter mentioned, to wit:

Name of respondent:	<i>Principal place of business</i>
Chilton Malting Co.....	Chilton, Wis.
The Columbia Malting Co.....	Chicago, Ill.
Froedtert Grain & Malting Co.....	Milwaukee, Wis.
Wm. E. Kreiner & Sons, Inc.....	Buffalo, N. Y.
The Kurth Malting Co.....	Wilwaukee, Wis.
Interior Malt & Grain Co.....	Minneapolis, Minn.
The Ladish-Stoppenbach Co.....	Milwaukee, Wis.
George J. Meyer Malt & Grain Corporation.....	Buffalo, N. Y.
Milwaukee Western Malt Co.....	Milwaukee, Wis.
Northwestern Malt & Grain Co.....	Chicago, Ill.
The Francis Perot's Sons Malting Co.....	Philadelphia, Pa.
Rahr Malting Co.....	Manitowoc, Wis.
H. W. Rickel & Co.....	Detroit, Mich.

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Name of respondent—Continued.	<i>Principal place of business</i>
L. Rosenheimer Malt & Grain Co.....	Kewaskum, Wis.
The Konrad Schreier Co.....	Sheboygan, Wis.
Albert Schwill & Co.....	Chicago, Ill.
Daniel D. Weschler & Sons, Inc.....	Milwaukee, Wis.
West Bend Malting Co.....	West Bend, Wis.
Wisconsin Malting Co.....	Manitowoc, Wis.

PAR. 3. The respondents named in paragraph 2 hereof are now, and since their organizations have been, engaged in the manufacture, at their respective places of business, of malt, and in the sale thereof. In the course and conduct of their businesses, all the said respondents, for more than 8 years last past, have caused, and still cause, such malt, when sold by them, to be transported in commerce from their respective places of business to, into and through various States of the United States other than the States in which they respectively have their place of business, to the purchasers in such other States and in the District of Columbia to whom said malt is and has been sold. The amount of malt manufactured and sold by said respondents constitutes, and at all times since 1929 has constituted, more than 65 percent of all of the malt manufactured in the United States and sold therein. Many purchasers of malt have no regular source of supply excepting from said respondents, and since 1929 have had no regular source of supply of malt excepting from said respondents.

Said respondents were, prior to 1930, in competition as to price with one another in the sale of malt between and among the various States of the United States, the territories thereof, and in the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described said respondents would have been at all times since 1929, and would now be, in such competition with one another.

PAR. 4. On or about August 5, 1930, respondents named in paragraph 2 hereof, for the purpose of eliminating price competition among themselves, entered into, through and by respondent United States Maltsters Association, have since carried out, and are still carrying out, through and by respondent, United States Maltsters Association, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained, uniform delivered prices to be and which have been and are still being exacted by them from their purchasers of malt in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to, and for the purpose of carrying out the aforesaid agreement, combination,

understanding, and conspiracy, respondents have done, among other things, the following:

(a) By agreement have fixed and maintained and still fix and maintain, uniform delivered prices for malt sold by respondents named in paragraph 2 hereof and by each of them.

(b) Each of the respondents named in paragraph 2 hereof agreed to file and does file with the respondent association a schedule of prices, terms, and conditions of all sales at which it will and does sell malt.

(c) Each said respondent named in paragraph 2 hereof agreed that it would not and does not deviate from the prices, terms, and conditions of sale stated in its prices filed with respondent association.

(d) Respondent association collects from and disseminates among the respondents named in paragraph 2 hereof information as to prices, terms, and conditions of sale and other information used and useful in carrying out the said agreement, combination, understanding, and conspiracy.

PAR. 5. The acts and practices of the respondents as herein alleged are all to 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 malt 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 malt in such commerce; have unreasonably restrained such commerce in malt, 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 24, 1938, issued and subsequently served its complaint in this proceeding upon the respondents, United States Maltsters Association, Chilton Malting Co., The Columbia Malting Co., Froedtert Grain & Malting Co., Wm. E. Kreiner & Sons, Inc., The Kurth Malting Co., Interior Malt & Grain Co., the Ladish-Stoppenbach Co., George J. Meyer Malt & Grain Corporation, Milwaukee Western Malt Co., Northwestern Malt & Grain Co., Perot Malting Co. (named respondent herein under the style of "The Francis Perot's Sons Malting Co."), Rahr Malting Co., H. W. Rickel & Co., L. Rosenheimer Malt & Grain Co., Schreiber Malting Co. (named respondent herein under the style of "The Konrad

Schreier Co."), Albert Schwill & Co., Daniel D. Weschler & Sons, Inc., West Bend Malting Co., and Wisconsin Malting 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 the allegations of said complaint were introduced by Edward L. Smith, attorney for the Commission, and in opposition to the allegations of the complaint by W. W. Corlett, Edward R. Johnston, and Russell Baker, attorneys for the respondents, before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequent thereto, Webster Ballinger, a trial examiner of the Commission was duly designated and appointed to prepare and file trial examiner's report upon the evidence in this matter, vice Robert S. Hall, deceased. 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 Webster Ballinger 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, United States Malsters Association, hereinafter referred to as "respondent Association," is an unincorporated voluntary trade association, with its principal office and place of business located at Chicago, Ill. Said respondent Association was organized in 1930 and existed under the name of "Bureau of Barley and Malt Statistics" until August 10, 1933, when the name of said respondent Association was changed to "United States Malsters Association." The membership of said respondent Association includes all of the commercial manufacturers of malt in the United States, with the exception of five, two of which are located in California.

PAR. 2. Respondent, Chilton Malting Co., is a corporation, having its principal place of business at 127-149 Main Street, Chilton, Wis.

Respondent, The Columbia Malting Co., is a corporation, having its principal office at 332 S. La Salle Street, Chicago, Ill.

Respondent, Froedtert Grain & Malting Co., Inc., is a corporation, having its principal place of business at Milwaukee, Wis.

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Respondent, Wm. E. Kreiner & Sons, Inc., is a corporation, having its principal place of business at Buffalo, N. Y.

Respondent, The Kurth Malting Co., is a corporation, having its principal place of business at Milwaukee, Wis.

Respondent, Interior Malt & Grain Co., is a corporation, which had its principal place of business at Minneapolis, Minn. This respondent was a wholly owned subsidiary of respondent, The Kurth Malting Co. and is now out of business.

Respondent, The Ladish-Stoppenbach Co., is a corporation, having its principal place of business at Milwaukee, Wis. Respondent, George J. Meyer Malt & Grain Corporation, is a corporation, having its principal place of business at Buffalo, N. Y.

Respondent, Milwaukee Western Malt Co., is a corporation, having its principal place of business at Milwaukee, Wis.

Respondent, Northwestern Malt & Grain Co., is a corporation, having its principal place of business at Chicago, Ill.

Respondent, Perot Malting Co., is a corporation, having its principal office at 808 Lafayette Building, Philadelphia, Pa. This respondent was known as "The Francis Perot's Sons Malting Co." prior to 1937, at which time it changed its name to "Perot Malting Co."

Respondent, Rahr Malting Co., is a corporation, having its principal place of business at Manitowoc, Wis. This respondent was known as "Cereal Products Co." prior to 1933, at which time it changed its name to "Rahr Malting Co."

Respondent, H. W. Rickel & Co., is a corporation, having its principal office at 1825 Adelaide Street, Detroit, Mich.

Respondent, L. Rosenheimer Malt & Grain Co., is a corporation, having its principal place of business at Kewaskum, Wis.

Respondent, Schreier Malting Co., is a corporation, having its principal place of business at Sheboygan, Wis. This respondent was known as "The Konrad Schreier Co." prior to October 3, 1935, at which time it changed its name to "Schreier Malting Co."

Respondent, Albert Schwill & Company, is a corporation, having its office at 141 W. Jackson Boulevard, Chicago, Ill.

Respondent, Daniel D. Weschler & Sons, Inc., is a corporation, having its principal office at 4295 W. Burnham Street, Milwaukee, Wis.

Respondent, West Bend Malting Company, is a corporation, having its principal place of business at West Bend, Wis.

Respondent, Wisconsin Malting Company, is a corporation, having its principal place of business at Manitowoc, Wis.

The above-named respondents are all commercial manufacturers of malt and constitute the entire membership of respondent Association. For convenience, the above-named respondents, except Interior Malt & Grain Co., will hereinafter be referred to as "respondent members."

PAR. 3. At the time of the organization of the respondent Association, its membership was composed of all of the respondent members hereinbefore named, except The Columbia Malting Co., Interior Malt & Grain Co., Schreier Malting Co., and Wisconsin Malting Co. The Schreier Malting Co. became a member in 1931. The Columbia Malting Co. became a member in 1933, and the Wisconsin Malting Co. became a member in 1934. The Interior Malt & Grain Co., being a subsidiary of The Kurth Malting Co., did not at any time hold an individual membership in the respondent Association.

PAR. 4. The respondent members of the respondent Association are now, and for several years last past have been, engaged in the business of manufacturing and selling malt. In the course and conduct of their respective businesses, said respondent members cause such malt, when sold by them, to be transported from their respective places of business to the various purchasers thereof located in the various States of the United States other than the States in which their respective shipments originate. Said respondent members maintain, and at all times mentioned herein have maintained, a course of trade in said malt in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. Prior to 1930 said respondent members were in competition as to price with one another in the sale and distribution of malt in commerce between and among the various States of the United States and in the District of Columbia 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.

PAR. 6. Malt is made chiefly from malting barley and is principally sold to brewers for the making of beer, ale, porter, and other malt beverages. There are three recognized grades of brewer's malt, viz, standard, choice, and fancy. The barley used in the manufacture of brewer's malt is grown chiefly in the Middle West, largely in the four principal barley-producing States, Wisconsin, Minnesota, North Dakota, and South Dakota, and to a limited extent in the States of Iowa, Michigan, Illinois, Ohio, New York, and California. While the Department of Agriculture has divided barley into several grades, such grading is not followed by commercial maltsters in purchasing barley for processing into malt.

PAR. 7. The common and usual method of purchasing barley for malting purposes is to make the purchase by sample, as the barley to be used must be of suitable size and uniformity, and have high germinating properties. As a result, barley used for malting purposes commands a higher price in the grain market over ordinary barley. Malting barley is purchased by malsters directly from farmers and country elevators, and in the terminal markets of Minneapolis, Milwaukee, and Chicago, of which Minneapolis is the most important. In some cases, when conditions indicate a possible advance in barley prices, malsters occasionally purchase in "round lots" for future delivery. In such "round lots" purchases the barley is likewise purchased on the basis of a sample of the barley which is to be received. In rare instances barley is purchased before it is harvested, in which case no sample is used but the purchase is made on the basis of grade.

PAR. 8. The manufacturing process followed in the processing of malt barley consists of thoroughly cleansing the barley so as to remove therefrom, as far as possible, all foreign matter, broken and small kernels, chaff, seeds, and dirt. The clean barley is then placed in compartments and subjected to a steeping and germinating process, as a result of which a change takes place in the barley which converts the nonsoluble starch to a soluble starch. The malt is then dried and stored in bins for shipment.

PAR. 9. There are several brewers located in the United States who manufacture malt for use in their breweries but who are not engaged in the commercial sale of malt. Brewers generally are dependent upon commercial maltsters for their supply of malt. The malt manufactured by the respondent members constitutes more than 65 percent of all the malt manufactured and sold in the United States.

PAR. 10. During the time herein referred to, the respondent members entered into, and thereafter carried out, certain understandings, agreements, combinations, and conspiracies for the purpose, and with the effect, of fixing and maintaining uniform prices, terms, and conditions of sale in the sale and distribution of malt and of otherwise restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale of malt in commerce among and between the several States of the United States and in the District of Columbia. Furthermore, the respondent members agreed to, and did, maintain the prices so fixed until modified or changed by notice from the respondent Association.

PAR. 11. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members, under the direction of, and with the cooperation of, Steven-

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son, Jordan & Harrison, organized and operated respondent Association as an unincorporated voluntary trade association to promote the mutual interests of the respondent members and to serve as an instrument or vehicle for the joint and cooperative purpose and action of respondent members in hindering, frustrating, suppressing, lessening, restraining, and eliminating competition in price and otherwise, in the sale and distribution of malt in commerce among and between the various States.

During all times since the organization of respondent Association, A. R. Stevenson, or some other member of the firm of Stevenson, Jordan & Harrison, acted as business manager of respondent Association, and A. H. Dyer, an employee of the firm of Stevenson, Jordan & Harrison, acted as secretary of said respondent Association. Other members or employees of said firm of Stevenson, Jordan & Harrison attended and participated in the regular meetings of the Executive Committee of said respondent Association.

The respondent United States Maltsters Association, from its inception and throughout its entire existence, has been directed and guided by the firm of Stevenson, Jordan & Harrison, which firm was paid a salary of \$30,000 per annum, payable in monthly installments of \$2,500. Assessments were made against each member of said respondent Association in the form of dues for the purpose of financing the Association.

The respondent Association, pursuant to the purposes for which it was organized, has, during its entire existence, collected and disseminated among the respondent members information as to prices, terms, and conditions of sale, and other information and statistical data useful for and which have been used in carrying out said understandings, agreements, combinations, and conspiracies.

Regular meetings of the members of the respondent Association were held, usually monthly, from its inception July 1, 1930, which meetings were usually attended by all or a majority of the respondent members. Such meetings of respondent members were usually preceded by a meeting of the Executive Committee, at which time various matters were discussed before submission to the general meeting. While the membership of the respondent Association consisted of only 15 to 18 members during the course of its existence, the Executive Committee consisted of from 5 to 7 members, exclusive of the representatives of Stevenson, Jordan, & Harrison, who usually attended the meetings of the Executive Committee. At the meetings of the Executive Committee and the meetings of the regular members, matters of general interest to the respondent members were discussed and considered. It was also customary to distribute to members of

the Executive Committee and to respondent members, copies of the Association's daily report for the preceding day, showing prices at which malt was being sold by the respondent members.

PAR. 12. In furtherance of said understandings, agreements, combinations, and conspiracies, and in order to carry out the purposes for which said respondent Association was organized, the respondent members agreed from time to time upon various details in connection with the conduct of their respective businesses, which were adopted by means of resolutions passed by the respondent members at the regular meetings of the respondent Association and its Executive Committee. All such resolutions when adopted by the respondent members at such meetings were uniformly followed by such respondent members without any deviation therefrom. Examples of such agreements adopted in the form of resolutions are the following:

1. At a meeting of respondent Association held August 5, 1930, the respondent members agreed that the freight rate to all points not previously listed in the freight-rate schedule be supplemented to the regular freight-rate schedule and be sent to each member and, pending such action, that each member apply the freight rate from Chicago, except to intermediate points between Minneapolis and Chicago.

2. At a regular meeting of the respondent Association held August 22, 1930, the respondent members agreed upon a method of reporting delinquent accounts to the respondent Association, whereby in the future each respondent member would report monthly all accounts that are unpaid after 60 days or more from date of invoice and also report all accounts that are covered by note settlement.

3. At a regular meeting of respondent Association held September 11, 1930, respondent members agreed upon the adoption of grading standards to apply immediately to all sales of barley malt.

4. At a regular meeting of respondent Association held September 11, 1930, respondent members agreed to quote only delivered prices or f. o. b. final destination.

5. At a regular meeting of respondent Association held October 31, 1930, the respondent members agreed to adopt the grading specifications recommended by the Executive Committee in all instances where a "guaranty" of specifications is required.

6. At a regular meeting of respondent Association held June 29, 1933, respondent members agreed not to sell malt to purchasers unless such purchasers agreed not to resell said malt, and said respondent members have since carried out said agreement.

7. At a regular meeting of the respondent Association held October 18, 1933, respondent members agreed that only sellers' contracts should

be used on any malt sale and that no riders should be added that would alter the spirit or substance of the standard form of contract.

8. At a regular meeting of respondent Association held December 15, 1933, respondent members agreed not to permit sales agents handling domestic malt to sell imported malt.

9. At a regular meeting of respondent Association held January 10, 1934, respondent members agreed that each respondent member send 25 copies of its current price list to the respondent Association for distribution by the respondent Association to each of the respondent members, which was generally continued until 1940.

10. At a regular meeting of respondent Association held May 11, 1937, respondent members agreed that the respondent Association add a record of cancellations of unfilled contracts to the daily sales report to members.

11. At a regular meeting of the respondent Association held February 10, 1938, respondent members agreed to allow a uniform discount of $\frac{1}{2}$ cent per bushel for cash, which was thereafter continued as the uniform cash discount for all respondent members.

PAR. 13. Pursuant to said understandings, combinations, and conspiracies, and in furtherance thereof, said respondent members, with the active cooperation of respondent Association, agreed upon, adopted, and carried out a method of price reporting which has been followed throughout the existence of respondent Association.

Through this price reporting system, each of the respondents agreed to, and did, make daily reports to the respondent Association of sales made by it, which information was in turn immediately compiled and issued to all members of the Association in the form of daily reports from the respondent Association to its members.

All of the respondent members of the Association have at all times quoted and sold malt f. o. b. point of delivery or at delivered prices. However, in reporting prices at which malt was sold in their daily reports to the respondent Association, the respondent members reported such prices on what was known as the "f. o. b. Chicago basis." This represented the price at which the malt would have been sold if the sales had been made f. o. b. Chicago. By reporting to the Association on "f. o. b. Chicago basis," the Association was immediately enabled to determine the uniformity of prices maintained by the respondent members and, in turn, the Association, by reporting sales in its daily reports on an "f. o. b. Chicago basis" to the respondent members, enabled such respondent members to determine if uniformity in price was being followed.

The prices "f. o. b. Chicago basis" reported by the respective respondent members in their daily reports since the organization of

respondent Association, have at all times been identical and uniform for the various grades of malt sold, and there has at no time been any deviation from such reported prices by any of the respondent members.

PAR. 14. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members agreed to fix and maintain, and did fix and maintain, the delivered price of malt. Uniformity of delivered prices was achieved by the respondent members through the use of Chicago, Ill., as a common basing point, that is, as the point from which the freight was calculated, irrespective of the fact that the malting plants of most of the respondent members were not located in Chicago but were located at various other points in the United States and had different freight rates to given destinations. By using a common point as a basis for price quotations, namely, Chicago, Ill., and basing the freight calculation on the fiction that all shipments originated at Chicago, the respondent members attained a uniformity of delivered prices.

PAR. 15. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members, with the active cooperation of respondent Association, further agreed upon, adopted, and carried out a definite method of modifying or changing the price of malt to the customers of the respondent members, which has been uniformly followed by all respondent members.

Whenever any respondent member offered or proposed to offer malt for sale at a price other than the price it had theretofore quoted, as shown by any price list distributed by it or as shown upon its daily report to the Association, such member promptly wired or telephoned the Secretary of the Association, advising him of the price "f. o. b. Chicago basis" quoted and whether such price would be effective immediately or at a future date, and usually confirmed the telegram or telephone message by mail. Immediately upon receipt of the telegram or telephone message from such member, the Secretary of respondent Association on the same day advised all other respondent members of the Association making a similar product, by wire or telephone, the new price "f. o. b. Chicago basis" offered or proposed and the effective date thereof, and transmitted the same information the same day to all other members who were not making a similar product, by mail.

In the event such price quotation involved an increase in the price of malt, it was customary for such respondent member, upon such increase in price, to notify its various customers and prospective customers of such increase and give them an opportunity within a certain specified time within which to place orders at the previous or lower price. A respondent member, in reporting an increase in the quota-

tion on the price of malt, usually advised the respondent Association that as of the date of notification, or effective at some future date, it would increase the price of malt.

Immediately upon receipt of notification from the respondent Association of change in quoted price, all the respondent members uniformly adopted such price and immediately notified their customers and prospective customers of such change in price and, where the change involved an increase in price, gave such customers and prospective customers an opportunity to purchase at the previous price within a specified time.

In those cases when the respondent members had contracted with their customers for future delivery of malt at the current price existing at the time of the execution of such contract, such prices were uniformly maintained against any increase in the price of malt; and in the case of a decrease in price the respondent members generally required performance of the contract at the prices specified therein.

PAR. 16. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members further agreed to, and did from time to time, furnish the respondent Association with copies of their price lists, showing current and future prices, in quantities sufficient in number to permit the Association to distribute such price lists to the remaining respondent members of said Association. Immediately upon receipt of such price lists the respondent Association distributed such lists to the various respondent members. Such price lists all quoted prices on various grades of malt at "f. o. b. Chicago basis" and usually specified that such prices were to be effective either immediately or at some specified date in the future and were to remain in effect for specific future periods of time.

PAR. 17. In order to determine that the respondent members were selling malt at the prices reported to the Association, the books of the respondent members of the Association were checked from time to time by accountants employed by the firm of Stevenson, Jordan, & Harrison in order to ascertain that the prices reported by the Respondent members in their daily reports and in price lists coincided with the prices charged by such respondent members to their customers as appeared from their books and invoices. Except as to minor errors in computation, no deviation from quoted prices was found by such check of the books and records of respondent members.

PAR. 18. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members agreed to adopt, and did adopt and maintain, uniform terms

and conditions of sale in connection with the sale and distribution of their malt. Prior to 1938 no cash discount was allowed by any respondent member to any of its customers. In February 1938, a representative of the Brewers' Association met with the Executive Committee of respondent Association to discuss the allowance of a cash discount on the purchase of malt from respondent members. Thereafter, at a meeting of the Association on February 10, 1938, Mr. Ruh, an officer of respondent, Albert Schwill & Co., announced that his company had decided to allow a cash discount of $\frac{1}{2}$ cent per bushel. Thereafter, all of the respondent members immediately quoted malt to customers and prospective customers on the basis of a cash discount of $\frac{1}{2}$ cent per bushel.

PAR. 19. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members have uniformly maintained prices, terms, and conditions of sale of malt and have not deviated therefrom.

The principal element entering into the cost of malt is the cost of the malting barley, which represents approximately from 80 to 85 percent of the cost of manufacturing malt. Except in the case of unusual and violent fluctuations in the malting-barley market, the market price of malting barley since the organization of the respondent Association has had little or no relation to the price of malt quoted by respondent members. For example, although there has been a wide variance in the prices paid for malting barley by the individual respondent members, the price of malt has remained absolutely constant without change of any kind from November 16, 1938, to the time the testimony in this case was concluded on March 17, 1941. The prices during this entire period, which were uniformly charged by all of the respondent members for the various grades of barley malt, were 85 cents per bushel for standard malt, 89 cents per bushel for choice malt, and 93 cents per bushel for fancy malt, "f. o. b. Chicago basis." In the case of bulk shipments, the respondent members charged the above prices less 1 cent per bushel, or 84 cents, 88 cents, and 92 cents for standard, choice, and fancy malt, respectively, "f. o. b. Chicago basis."

PAR. 20. The Commission further finds that there are important factors connected with the manufacture and sale of malt which, in the absence of any price-fixing agreement, would preclude uniformity of price and result in price competition.

Net manufacturing costs of the respondent members were not uniform but, based upon reports made by such respondent members to the respondent Association, such costs varied as much as 20 percent to 30 percent.

The prices paid for barley by the various respondent members were not uniform but, instead, much of such barley was purchased on a fluctuating market. The prices paid for barley purchased direct from the farmers, from country elevators, and upon the various exchanges were all different.

The cost of transportation of barley was not uniform among all of said respondent members. Certain of respondent members who were suitably located for lake transportation caused their barley to be shipped by boat to their processing plants; others were required to use rail transportation. The cost of shipping by boat was much lower than the cost of shipping by rail. Certain of the respondent members, by reason of their location between freight rate break points, were entitled to the malting-in-transit privilege, whereby the barley was unloaded at their plants, processed, and the shipment continued as malt at the same rate as applied to the barley, which is lower than the freight rate on malt. Other respondents, not being located at such intermediate points between so-called freight rate break points, were not entitled to such malting-in-transit privilege, which increased the transportation rate of their product.

The location of certain of respondent members' plants near the point of origin of the barley used for malting purposes in some instances gave such respondent members an advantage in cost of transporting barley.

The difference in cost of cleaning raw barley before subjecting it to the steeping process varied among the respondent members from 3 to 10 cents per bushel. Furthermore, these cleaning costs varied from year to year and from month to month, and even varied in various cars delivered in the same shipment, depending upon the character and nature of the barley shipped.

The difference in malt produced by the various respondent members also constituted a factor which should bring about price competition among the respondents. In the original selection of barley for malting purposes, various maltsters sometimes differ as to the grade of barley preferred in making malt, and the finished malt distributed by such maltsters was not uniform as between each other, and in some cases brewmasters found it necessary to keep the malt of different maltsters separate in making their beer. In fact, the malt of certain of the respondent members was refused by certain brewers because such malt did not measure up to the brewers' standards as well as the malt produced by other respondent members.

PAR. 21. The afore-said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove found, have had, and do

have, the effect of unduly lessening, restricting, restraining, and suppressing competition in the sale and distribution of malt in commerce among and between the several States of the United States, and of depriving the public of the full benefit of competition in said commerce between and among the respondent members and between them and their competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of competitors of respondents and of the public, and have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the sale and distribution of malt in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in malt; and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, report of Webster Ballinger, a trial examiner appointed to prepare and file a trial examiner's report upon the evidence, vice Robert S. Hall, deceased, 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 respondents, United States Maltsters Association, an unincorporated association, Chilton Malting Co., a corporation, The Columbia Malting Co., a corporation, Froedtert Grain & Malting Co., a corporation, Wm. E. Kreiner & Sons, Inc., a corporation, The Kurth Malting Co., a corporation, The Ladish-Stoppenbach Co., a corporation, George J. Meyer Malt & Grain Corporation, a corporation, Milwaukee Western Malt Co., a corporation, Northwestern Malt & Grain Co., a corporation, Perot Malting Co., a corporation, Rahr Malting Co., a corporation, H. W. Rickel & Co., a corporation, L. Rosenheimer Malt & Grain Co., a corporation, Schreier Malting Co., a corporation, Albert Schwill & Co., a corporation, Daniel D. Wesch-

ler & Sons, Inc., a corporation, West Bend Malting Co., a corporation, and Wisconsin Malting Co., a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of malt in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any common course of action, 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 others not parties hereto to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining prices, terms, or conditions of sale for malt, or adhering to or promising to adhere to the prices, terms, or conditions of sale so fixed.

2. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of respondent United States Maltsters Association or any other medium or agency concerning proposed or future prices, terms, or conditions of sale.

3. Exchanging, distributing, or relaying among manufacturing respondents or any of them or through respondent United States Maltsters Association or through any other medium or central agency, price lists or other information showing current or future prices, terms, or conditions of sale or information showing current or future prices, terms, or conditions of sale of any particular respondent.

4. Authorizing or permitting examination of the books or other records of the respondent manufacturers by any agent of the United States Maltsters Association or by any agent of the respondents or any of them, to determine or check the prices at which any given respondent manufacturer has made sales, is currently making sales, or expects to make sales.

5. Formulating, establishing, putting into operation, continuing, or using in any way any reporting plan using Chicago, Ill., or any other common basing point which results in the establishment and maintenance among the respondent members or any two or more of them of uniform delivered prices to any given destination.

6. Quoting prices, terms, and conditions of sale determined under a method or system of a common basing point for the purpose, or with the effect, of making the delivered price quotation of any two or more of the respondents the same to any given destination.

7. Formulating or putting into operation any other practice or plan which has the purpose or the tendency or effect of fixing prices for malt, or otherwise restricting, restraining, or eliminating competition in the sale and distribution of such products.

8. Employing or utilizing respondent, -United States Maltsters Association, or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to Interior Malt & Grain Co., 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.

IN THE MATTER OF
COPPER ROOFS CORPORATION

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

Docket 4651. Complaint, Dec. 3, 1941—Decision, Dec. 29, 1942

Where a corporation, engaged in competitive interstate sale and distribution of copper roofing material which, made to its specifications by another concern, it sold to dealers, roofing contractors and supply houses, supplying to purchasers detailed instructions describing the patented method of application, and frequently assisting the dealer in connection with the application of the first order or first few orders; in advertising its said product through leaflets, circulars, and other printed matter which it furnished to its salesmen and to dealers who used it in soliciting the purchase of the roofing by the public—

(a) Represented, directly or by implication, that its said product was impervious to all weather and climatic conditions, being proof against wind, hurricane, storm, and hail; afforded permanent protection against rain; was everlasting and earthquakeproof; that the copper used therein was the same as that used in the roofs of the ancient European cathedrals; and that the roofing possessed insulating properties and made houses warmer in winter and cooler in summer;

The facts being that while the standard weight of copper ordinarily used for roofing purposes is 16 ounces per square foot, its roofing weighed 3 ounces per square foot, and as such was not of sufficient thickness and strength, in the opinion of the trade, to provide a satisfactory roofing material; copper used by it therein could not properly be compared with that used to roof ancient cathedrals in which the material was much thicker and heavier; and the other claims made by it, as above set forth, were false and misleading; and

(b) Represented that the roofing was applied by factory-trained men only, and that it itself applied the roofing material and was responsible for defects in material or workmanship;

The facts being it was usually applied by employees of local dealers or roofing contractors, very few of whom had ever had any factory training; and it did not itself apply the roofing in the usual case, or ordinarily assume responsibility for defects in material or workmanship;

With tendency and capacity of misleading and deceiving a substantial number of dealers and members of the purchasing public into the mistaken belief that said roofing possessed qualities and characteristics which it did not, thereby causing such public to purchase substantial quantities of the roofing; whereby 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. Andrew B. Duvall*, trial examiner.

Mr. James I. Rooney and *Mr. R. P. Bellinger* for the Commission.

Quarles, Spence & Quarles, of Milwaukee, Wis., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Copper Roofs 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, Copper Roofs Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in Rooms 5058-5060 Plankinton Building, 161 West Wisconsin Avenue, Milwaukee, Wis.

PAR. 2. Respondent now is, and since the date of its incorporation in January 1936, has been, engaged in the business of selling copper roofing material manufactured for it, in accordance with its detailed specifications, at Waterbury, Conn. Respondent causes said product, when sold, to be shipped from the place of manufacture thereof in the State of Connecticut to the purchasers thereof at their respective points of location in States other than the State in which such shipments originate, and in the District of Columbia. Respondent now 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. 3. Respondent's product consists of 12-inch copper squares weighing 3 ounces and is known in the trade as 3-oz. copper roofing. Said copper squares are backed with a felt preparation. Respondent is the owner of patents covering the method of applying the said copper roofing known as "Double-lock Method" and has adopted the name "Double-lock" copper roofs for said product. Detailed specifications and instructions describing the said patented methods are furnished by respondent to the purchasers of said product for their use and instruction in applying such roofs.

PAR. 4. Respondent has adopted various methods of selling its product to the general public. Such methods include sales through subsidiary companies, distributors, applying dealers, independent roofing concerns, and by salesmen. Under all of such methods it was and is necessary for such subsidiary companies, distributors, dealers, and independent roofers to secure a license from the respondent in order to qualify them to sell said product. Such a license relates to the method of applying said copper material to roofs.

Complaint

35 F. T. C.

PAR. 5. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said product by the purchasing public, respondent, in leaflets, circulars, and other written or printed matter furnished to its various kinds of dealers and salesmen and circulated and distributed by them in soliciting business from the general public has made many false, misleading, and deceptive statements and representations with reference to its said product. Among and typical of the statements and representations used and caused to be disseminated are the following:

"DOUBLE-LOCK"

COPPER ROOFS

"DOUBLE-LOCKED"

To Keep Out Wind, Rain and Snow **PERMANENTLY**

You can forget **ROOF TROUBLES** when you Roof with **EVERLASTING COPPER**

In connection with a picture purporting to be that of Hildesheim Cathedral in Germany respondent states:

FOR CENTURIES Copper Roofs have protected Sacred Shrines. Among the many which have long survived wars and turmoil is Hildesheim Cathedral, built in Germany in 1320. After 619 years of exposure to the elements this beautiful copper roof is still giving perfect service.

EARTHQUAKE PROOF Weighing only sixty pounds to the hundred square feet, "Double-lock" is the lightest permanent roof you can buy * * * A heavy supporting structure is not needed.

The whole range of climatic conditions which might exist in any country is spanned by thousands of "Double-lock" copper roofs which have been built in every part of the country, from the Atlantic to the Pacific, from the Great Lakes to the tip of Florida, and from rocky mountain tops to desert valleys. Copper Roofs Companies for years have built more copper roofs than the rest of the field combined, thus the main "proving ground" for "Double-lock" copper roofs is **ACTUAL EXPERIENCE**.

WIND PROOF

FIRE PROOF

HAIL PROOF * * *

Only factory trained men are used.

INSULATES—Saves dollars on winter fuel. Keeps out summer heat.

You can avoid the almost certain expense of interior damage resulting from leaks by roofing now with a "Double-lock" Copper Roof.

In connection with pictures depicting two houses, on one of which the roofing material is other than copper, the other purporting to be roofed with respondent's "Double-lock" copper roofing, wherein the roof purporting to be of material other than copper is shown blow-

ing away while the roof purporting to be roofed with respondent's product remains intact, there appears the following:

HURRICANE!

SWEEPS NEW ENGLAND!

Thousands of Roofs Damaged.

September 21, 1938,

Not a single "Double-lock" Copper Roof was reported damages by this devastating hurricane * * * An unequalled record.

PAR. 6. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent, directly and by implication, represents, and has represented, to customers and prospective customers that its product, Double-lock Copper Roof, is everlasting, earthquakeproof, hurricaneproof, stormproof, fireproof, hailproof, and weatherproof; that respondent's copper roofing is of the same kind and quality as that used on the roofs of ancient cathedrals in Europe; that only factory trained men apply said roofing material; that leaks will be prevented by applying respondent's material to roofs; that the application of "Double-lock" Copper Roofs results in keeping houses cooler in summer and warmer in winter by reason of the insulating properties of said copper.

PAR. 7. The statements and representations so made and used by respondent are false, deceptive and misleading. In truth and in fact, roofs constructed of respondent's "Double-lock" copper product are not everlasting but are subject to destruction by corrosion under certain conditions and to other damage and deterioration. Such roofs are not earthquake proof, hurricaneproof, stormproof, fireproof, hailproof, or weatherproof. Roofs constructed with respondent's product are not comparable to copper roofs on ancient cathedrals, as indicated by the use of the photographs in connection with the representations made, since the copper used on the roofs of said cathedrals is several times thicker than that sold by respondent and consequently is much more desirable, durable, and lasting. Leaks will not in all cases be prevented by applying respondent's material to roofs. Factory trained men are not used in applying respondent's roofing material. Houses roofed with respondent's material are not kept cooler in summer and warmer in winter by reason of the insulating properties of copper. Of all metals, copper is one of the best known conductors of heat and cold and is inferior as an insulator to other materials even when backed with felt.

PAR. 8. In addition to the false and misleading statements and representations set forth in paragraph 5 hereof, the advertising matter

furnished by the respondent to its distributors, dealers, and salesmen contains many testimonials as to the merits of said "Double-lock" Copper Roofs, purporting to be testimonials which have been voluntarily furnished by the signers thereof, whereas in truth and in fact said testimonials have not been voluntarily furnished by the signers thereof but have been solicited by the respondent.

PAR. 9. In addition to the foregoing false and misleading statements and representations, and in connection therewith, the respondent states in certain of its advertising matter as follows:

COPPER ROOFS COMPANY

Builders of those internationally famous "Double-lock" roofs of "everlasting"
Copper * * *

Said respondent also allows its distributors, either operating under a charter of incorporation or under a trade name, to use its own corporate name in conjunction with the name of the State within which said distributor does business, and places its own corporate name and address on circulars and pamphlets furnished by it to its distributors, salesmen, and agents for distribution to purchasers and prospective purchasers.

Through the use of the above quoted statement and acts and practices hereinabove set forth, respondent represents, directly and by implication, that it is the builder of "Double-lock" Copper Roofs and is directly responsible to the purchasers of such roofs for all defects of material and workmanship. In truth and in fact, said copper roofs are not built by respondent or under its supervision and control and respondent has repeatedly disclaimed liability for defects of both materials and workmanship.

PAR. 10. In the course and conduct of its said business as herein alleged, respondent Copper Roofs Corporation is now, and at all times herein mentioned has been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of roofing materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. The acts and practices of the respondent as hereinabove set forth have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. 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 product. In consequence, trade has been unfairly diverted to the 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.

PAR. 12. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 3, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Copper Roofs 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 that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (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, Copper Roofs Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan; with its principal office and place of business located at 5058-5060 Plankington Building, 161 West Wisconsin Avenue, Milwaukee, Wis. From 1936 until some time in 1941, respondent was engaged in the sale and distribution of copper roofing material, such material being manufactured for it and in accordance with its detailed specifications by a manufacturing concern located in Buffalo, N. Y. The discontinuance of the business in 1941 was due to respondent's inability, because of the war, to obtain copper.

PAR. 2. In the course and conduct of its business respondent caused its roofing material, when sold, to be shipped from the place of manufacture 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 maintained a course of trade in its product 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 its product, respondent was in substantial competition with other corporations and with individuals and firms engaged in the sale and distribution of roofing materials in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent's roofing was customarily sold direct to independent dealers, roofing contractors, and supply houses, although at one time respondent marketed some of its material through subsidiary companies owned or controlled by it. When selling its material, respondent supplied to the purchaser detailed specifications and instructions describing the patented method of application. In connection with the first order or first few orders sold to a dealer, respondent frequently assisted the dealer in the application of the material, such assistance being rendered through respondent's salesmen or other representatives.

In promoting the sale of its roofing, respondent furnished to its salesmen various pieces of advertising literature, such as leaflets, circulars, and other printed matter. Such advertising material was also supplied by respondent to the dealers purchasing its material, and the dealers in turn used such material in contacting the public and soliciting the purchase by the public of the roofing. Among and typical of the statements and representations appearing in such advertising material were the following:

HURRICANE!

SWEEPS NEW ENGLAND!

Thousands of Roofs Damaged

September 21, 1933.

Not a single "Double-lock" Copper Roof was reported damaged by this devastating hurricane * * * An unequalled record. (Com. Ex. 2)

You can forget

ROOF TROUBLES

When you Roof with

"EVERLASTING COPPER" (Com. Ex. 1)

For CENTURIES * * *

Copper Roofs have Protected Sacred Shrines Among the many which have long survived wars and turmoil is Hildesheim Cathedral built in Germany in 1320. After 619 years of exposure to the elements this beautiful copper roof is still giving perfect service. (Com. Ex. 2)

EARTHQUAKE PROOF—Weighing only sixty pounds to the hundred square feet, "Double-lock" is the lightest permanent roof you can buy. A heavy supporting structure is not needed. (Com. Ex. 4Z30.)

The whole range of climatic conditions which might exist in any country is spanned by the thousands of "Double-lock" Copper Roofs which have been built in every part of the country, from the Atlantic to the Pacific, from the Great Lakes to the tip of Florida, and from rocky mountain tops to desert valleys. Copper Roofs Companies for years have built more copper roofs than the rest of the field combined, thus the main "proving ground" for "Double-Lock" Copper Roofs is ACTUAL EXPERIENCE. (Com. Ex. 4Z34.)

* * * WIND-PROOF * * * HAIL-PROOF * * * (Com. Ex. 4Z39)

* * * Only factory trained men are used. (Com. Ex. 4Z31)

INSULATES—Saves dollars on winter fuel. Keeps out summer heat. (Com. Ex. 1)

You can avoid the almost certain expense of interior damage resulting from leaks by roofing now with a "Double-lock" Copper Roof. * * * (Com. Ex. 4Z42)

COPPER ROOFS COMPANY

Builders of those internationally famous "Double-lock" roofs of Everlasting Copper (Com. Ex. 4Z39)

PAR. 5. Through the use of these representations and other of a similar nature, respondent represented, directly or by implication, that its roofing was impervious to all weather and climatic conditions, being proof against wind, hurricane, storm, and hail; that it afforded permanent protection against rain; that it was everlasting; that it was earthquakeproof; that the copper used in such roofing was of the same kind and quality as that used on the roofs of ancient European cathedrals; that the roofing was applied by factory-trained men only; that the roofing possessed insulating properties and was capable of making houses cooler in summer and warmer in winter; and that respondent itself applied the roofing material, or was responsible for defects in material and workmanship.

PAR. 6. Respondent's roofing consisted of copper strips 12 inches wide and .004 inch thick, each roll of the roofing having a length of 246 feet. The copper was backed with a felt material. The roofing was of the type known in the trade as "3-oz. copper roofing," being so designated because 1 square foot of the copper weighed 3 ounces. The roofing was applied by a patented method known as the "Double-Lock" method, which involved a process whereby the several sections of a roof were fastened together by means of a crimping or locking operation. The roofing was advertised and sold by respondent under the trade name "Double-Lock Copper Roofs."

The evidence discloses that the standard weight of copper ordinarily used in the trade for roofing purposes is 16 ounces per square foot, which means that such copper has some five times the thickness of the 3-ounce copper used by respondent. The general opinion in the trade is that 3-ounce copper is not of sufficient thickness and strength to provide a satisfactory roofing material. It is apparent from the record that respondent's roofing was not impervious to weather and climatic conditions, and was not proof against wind, hurricane, storm, or hail. It did not afford permanent protection against rain. It was not earthquakeproof, nor could it properly be described as "everlasting." Numerous instances are disclosed by the record in which the roofing failed to give satisfactory service. While some of these failures appear to have been due to defective workmanship in applying the material, others were unquestionably due to the inability of the roof to withstand weather and climatic conditions. Corrosion was present in a number of instances, while in other cases the roof developed cracks and holes.

The copper used by respondent could not properly be compared with the copper used to roof ancient cathedrals, the material in the latter instances being so much thicker and heavier than respondent's material. Respondent's roofing was not applied by factory-trained men exclusively, but was usually applied by employees of local dealers or roofing contractors, very few of whom had ever had any factory training. The roofing did not possess insulating properties to any appreciable extent and was incapable of making houses cooler in summer or warmer in winter. Respondent did not itself apply the roofing in the usual or customary case, nor did it ordinarily assume responsibility for defects in material or workmanship. Aside from occasionally assisting in the application of the roofing, respondent left to the local dealer or contractor the work of applying the material.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to its roofing, as set forth in paragraphs 4 and 5 hereof, were erroneous and misleading.

PAR. 8. The Commission further finds that the use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public into the erroneous and mistaken belief that respondent's roofing possessed qualities and characteristics which it did not in fact possess, and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondent's roofing as a result of the erroneous and mistaken belief so engendered. In consequence thereof, sub-

stantial trade was diverted unfairly 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.

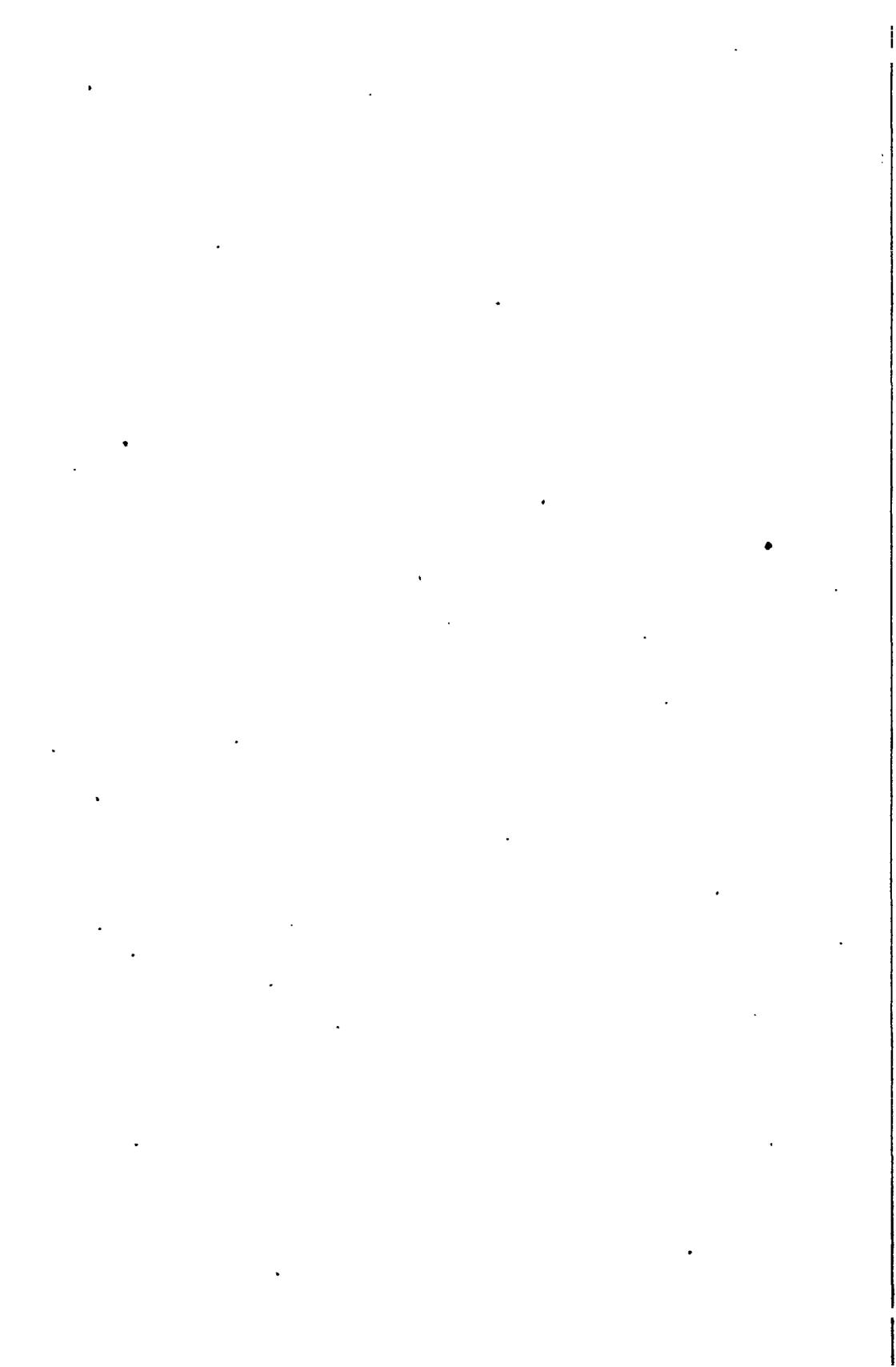
ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, 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 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, Copper Roofs 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 copper roofing 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 roofing is windproof, hurricaneproof, stormproof, hailproof, weatherproof, or earthquakeproof.
2. That said roofing affords permanent protection against rain.
3. That said roofing is "everlasting."
4. That said roofing, or the copper used therein, is comparable with the copper roofing of ancient cathedrals or other ancient structures.
5. That said roofing is applied by factory-trained men exclusively.
6. That said roofing possesses insulating properties, or is capable of making houses cooler in summer or warmer in winter.
7. That respondent itself applies the roofing, or assumes responsibility for defects in material or workmanship, when respondent does not in fact make such application or assume such responsibility.

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



ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

ECONOMY SALES CO., INC., AND SAMUEL KNIGHT, ALIAS SAMUEL NITKE. Complaint, June 3, 1940. Order, August 4, 1942. (Docket 4150.)

Charge: Using lottery schemes in merchandising; in connection with the sale of luggage, jewelry, watches, clocks, blankets, electrical appliances, tableware, pen and pencil sets, 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 it appearing to the Commission that the corporate respondent is no longer in existence, having been dissolved by proclamation of the secretary of state of New York, and that the Commission's order issued in a previous case, which has now become final, prohibits the acts and practices involved herein on the part of the individual respondent named in the complaint 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. Arthur F. Thomas*, trial examiner.

Mr. L. P. Allen, Jr., and *Mr. J. V. Mishou* for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

THE HOWELL CO. Complaint, February 6, 1940. Order, August 7, 1942. (Docket 4022.)

Charge: Advertising falsely or misleadingly as to composition of product; in connection with the manufacture and sale of household and office furniture.

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. Edward E. Reardon, Mr. William C. Reeves, and Mr. James A. Purcell*, trial examiners.

Mr. William M. King and Mr. Maurice C. Pearce for the Commission.
Parkinson & Lane, of Chicago, Ill., for respondent.

MANHATTAN BREWING Co. Complaint, August 20, 1941. Original findings and order, July 6, 1942.¹ (Docket 4572.) Order vacating, etc., August 17, 1942.

Charge: Advertising falsely or misleadingly, misbranding or mislabeling and using misleading product name or title as to source or origin of product, domestic product being imported, and as to endorsements or approval of product and claiming falsely or misleadingly endorsement of British Royal family; in connection with the brewing and sale of beer and ale.

Findings as to the facts and order to cease and desist in this case were vacated and set aside and case set down for further hearings, by the following order:

This matter coming on to be heard by the Commission upon respondent's petition to modify the order to cease and desist issued herein on July 6, 1942, which petition is based upon an alleged misunderstanding of the circumstances under which respondent filed an answer admitting all the material allegations of fact charged in the complaint, and the Commission having given consideration to said petition but without passing upon or determining what basis there may or may not have been for the alleged misunderstanding, and in order that full opportunity may be provided for the presentation of evidence in opposition to the allegations of the complaint after the evidence in support of said allegations is completed.

It is ordered, That the findings as to the facts and order to cease and desist issued herein on July 6, 1942, be, and the same hereby are, vacated and set aside.

It is further ordered, That respondent's answer appearing at lines 1 to 10, on page 3 of the transcript of the hearing held at Chicago, Illinois, on May 7, 1942, be, and it is hereby, stricken from the record, with leave to respondent's counsel to file a new answer to the complaint herein within 20 days from the date of the service upon such counsel of a copy of this order.

It is further ordered, That the case be set down for further hearings in accordance with the Commission's regular procedure.

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

Mr. DeWitt T. Puckett for the Commission.

McHale, Arthur, Myers & Patrick, of Indianapolis, Ind., for respondent.

¹ Not published.

GRANITE RAILWAY Co. Complaint, July 22, 1941. Order, August 27, 1942. (Docket 4545.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results; in connection with the quarrying and sale of blocks of granite to be manufactured into monuments or memorials.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Roswell M. Austin, of St. Albans, Vt., for respondent.

J. S. SWINGLE, INC. Complaint, July 22, 1941. Order, August 27, 1942. (Docket 4546.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results; in connection with the quarrying and sale of blocks of granite to be manufactured into monuments or memorials.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Roswell M. Austin, of St. Albans, Vt., for respondent.

WILLIAM G. NASH, Sr., WILLIAM G. NASH, Jr., AND FLORENCE NASH Cox trading as NASH BROTHERS DRUG Co. Complaint, April 27, 1939. Original findings and order, August 1, 1939. 29 F. T. C. 438. (Docket 3775.) Order vacating, etc., August 31, 1942.

Charge: Advertising falsely or misleadingly as to ailments and symptoms, history of product, qualities, properties or results, guaranties, safety of product, and scientific or relevant facts and neglecting unfairly or deceptively to make material disclosure as to safety of product; in connection with the compounding and sale of a medical or pharmaceutical preparation designated "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic."

Stipulation of facts, findings as to the facts, and order to cease and desist in this case were vacated and set aside and case reopened by the following order:

This matter came on to be heard by the Federal Trade Commission upon the petition filed July 30, 1942, by Richard P. Whiteley, assistant chief counsel for the Commission, which petition was on August 5, 1942, duly served upon respondents, together with an order to show cause why said petition should not be granted and fixing the time and place for hearing thereon as August 20, 1942, at the offices of the Commission in Washington, D. C. Respondents did not appear at the time and place fixed for such hearing and did not request any postponement thereof. The Commission having duly considered the matter, and it appearing that the agreed stipulation of facts is incorrect in certain particulars, causing similar factual errors in the findings as to the facts and resulting in provisions in the order to cease and desist which are materially different from the provisions which otherwise would have been contained therein, and it further appearing to the Commission that the public interest requires such action.

It is ordered, That the agreed stipulation of facts approved July 26, 1939, and the findings as to the facts and order to cease and desist issued August 1, 1939, be, and the same hereby are, vacated and set aside, and the case be, and hereby is, reopened for the purpose of receiving such competent testimony and other evidence in support of the allegations of the complaint or in opposition thereto as may be offered.

Mr. DeWitt T. Puckett for the Commission.

Mr. Clinton Robb, of Washington, D. C., for respondents.

THE GEORGIA MARBLE FINISHING WORKS. Complaint, May 26, 1942. Order, September 8, 1942. (Docket 4764.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of product; in connection with the manufacture and sale of tombstones and monuments.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the corporate respondent has been dissolved through proper court procedure and its charter surrendered, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed.

Mr. B. G. Wilson for the Commission.

Mr. Eugene A. McCanness, of Canton, Ga., for respondent.

SCOTCH WOOLEN MILLS. Complaint, December 12, 1922. Original dismissal order, July 18, 1924. (Docket 940.) 7 F. T. C. 547. Order vacating, etc., September 25, 1942.

Charge: Assuming or using misleading trade or corporate name and advertising falsely or misleadingly as to dealer being manufacturer; in connection with the manufacture and sale of men's clothing.

Order of dismissal in this case vacated and set aside and case reopened by the following order:

This matter came on to be heard by the Federal Trade Commission upon petition to reopen filed August 4, 1942, by Richard P. Whiteley, assistant chief counsel for the Commission, respondent's answer thereto, and oral argument in support of and in opposition to said petition. Being now fully advised in the premises, and it appearing to the Commission that conditions of law have changed and also that the public interest requires such action.

It is ordered, That the order of dismissal entered herein on July 18, 1924, be, and the same hereby is, vacated and set aside and the case be, and hereby is, reopened for such further proceedings as the public interest may require.

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

Mr. Isaac S. Rothschild, of Chicago, Ill., for respondent.

T. F. HEE, trading as THE EASTERN HERB Co. and as T. F. HEE HERB Co. Complaint, January 4, 1941.¹ Order, September 30, 1942. (Docket 3942.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results; in connection with the sale of certain medicinal preparations designated "Chinese Herbs."

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the amended and supplemental complaint herein be, and it 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* and *Mr. Edward E. Reardon*, trial examiners.

Mr. Karl Stecher for the Commission.

Luce, Forward, Lee & Kunzel, of San Diego, Calif., for respondent.

JOHN L. KEENAN, trading as FRANKLIN INSTITUTE. Complaint, October 12, 1940.² Order, October 26, 1942. (Docket 4347.)

Charge: Advertising falsely or misleadingly as to Government connection, jobs and employment, scientific or relevant facts, and oppor-

¹ Amended.

² Amended and supplemented by order of October 2, 1941.

tunities; and assuming or using misleading trade or corporate names as to correspondence school being, respectively, an institute and a collection agency; in connection with the sale of correspondence courses of study and instruction intended to prepare students for civil-service positions.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the individual respondent died on September 25, 1942, 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. Arthur F. Thomas*, trial examiner.

Mr. William L. Pencke for the Commission.

MacFarlane, Harris & Goldman, of Rochester, N. Y., for respondent.

GOLD MEDAL HAARLEM OIL CORP. Complaint, April 8, 1942. Order, November 3, 1942. (Docket 4745.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results and safety of product and scientific or relevant facts; in connection with the compounding and sale of a medicinal preparation variously designated "Gold Medal Haarlem Oil," "Gold Medal Haarlem Oil Capsules," and "Gold Medal," recommended for use in the treatment of various kidney and bladder ailments and diseases.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing to the Commission that the respondent corporation had been dissolved prior to the issuance to the complaint herein, and that it has been succeeded in business by individuals, and the Commission 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. S. F. Rose for the Commission.

Mr. Herman S. Kneipe, of Jersey City, N. J., and *Mr. William L. Hanaway*, of New York City, for respondent.

THE P. R. MITCHELL Co. Complaint, April 23, 1940. Order, November 13, 1942. (Docket 4100.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to composition and quality of product, special or reduced price and manufacturer maintaining or controlling laboratory, and product as tested and approved by experts; in connection with the manufacture and sale of pillows, bedding, and like products.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Richard C. Swing, of Cincinnati, Ohio, for respondent..

JOHN A. WATHEN DISTILLERY CORP. Complaint, February 14, 1940.
Order, November 17, 1942. (Docket 4032.)

Charge: Advertising falsely or misleadingly as to length of time in business and qualities or properties, success, use or standing, and source or origin of product, and identity thereof, and misbranding and assuming or using misleading trade or corporate name in respect thereto; in connection with the distillation and sale of liquors.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission, and it appearing that the respondent has sold all of its whiskies, plants, machinery, equipment, and good will, including all brand names, and that the respondent has changed its corporate name from John A. Wathen Distillery Co., to Midwest Industries, Inc., the Commission having duly considered the matter, and it appearing that the public interest does not now require litigation of the issues involved in the complaint;

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. Floyd O. Collins and *Mr. J. W. Carter, Jr.*, for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondent.

FEDERAL COMPRESS & WAREHOUSE CO., ET AL. Complaint, October 9, 1940.¹ Order, November 25, 1942. (Docket 4090.)

Charge: Combining or conspiring to restrict, restrain, and suppress competition in the compressing and storing of cotton and in the sale of jute or burlap bagging and steel bands or ties sold and used in connection with the compressing of cotton and to create and maintain a monopoly in the compressing of cotton and in the sale of jute or burlap bagging and steel bands or ties sold and used in connection therewith; through operation of cotton gins at or below cost and competitive

¹ Amended.

prices, subsidizing credit loans to planters and cotton ginneries, and various other acts and practices, as set forth in the complaint.

Dismissed, after answers and trial, by the following order:

This matter came on to be heard by the Commission upon the amended complaint, testimony and other evidence, report of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint, and the Commission having duly considered the record and being now fully advised in the premises:

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

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

Mr. Reuben J. Martin and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. Lowell W. Taylor, *Mr. Herbert Gannaway*, and *Mr. William J. Driver*, of Memphis, Tenn., for Federal Compress & Warehouse Co., Valley Credit Co., Mississippi Valley Gin Co., Tensas Parish Gin Co., Madison Parish Gin Co., Inc., R. L. Taylor, Binford Hester, E. F. Wade, and Winston E. Cheairs.

Mr. William J. Driver, of Memphis, Tenn., along with *Wynn, Hafter & Lake*, of Greenville, Miss., for Southern Credit Corp.; *Owens, Ehrman & McHaney*, of Little Rock, Ark., for Rainwater Credit Corp., C. N. Rainwater, and J. E. Andre; and *Mr. James H. Gilfoil, Jr.*, of Lake Providence, La., for W. Dennis Brown and Fred Schneider.

NEW CENTURY BEVERAGE CO., INC. Complaint, November 25, 1941. Order, November 30, 1942. (Docket 4646.)

Charge: Advertising falsely or misleadingly as to comparative merits, qualities, properties or results, composition and source or origin of product, and using misleading product name or title as to source or origin of product; in connection with the sale of carbonated water.

Dismissed, after answer and trial, by the following order:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of, and in opposition to, the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto; and the Commission having duly considered the matter and being now fully advised in the premises.

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Armstrong & Campodonico, of San Francisco, Calif., for respondent.

LA VIDA BOTTLING CO., INC. ET AL. Complaint, May 29, 1942. Order, December 29, 1942. (Docket 4768.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, scientific or relevant facts, and comparative merits; in connection with the bottling and sale of mineral water.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondents, La Vida Bottling Co., Inc., a corporation, and Paul G. Hausman, individually and as president of said corporation; William N. Miller, individually and as vice president of said corporation; and Alfred D. Mitchell, individually and as secretary of said corporation, have entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement is, on this day, approved by the Commission, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein issued on May 29, 1942, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Robt. N. McMillen for the Commission.

Mr. Raphael Dechter, of Los Angeles, Calif., for respondents.



STIPULATIONS ¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST ²

3510. Novelty Shirts—Composition.—Joel Isaacs, an individual trading as Joel Isaacs Shirt Co., engaged in the sale and distribution of novelty shirts 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.

Joel Isaacs, in connection with the sale and distribution of his merchandise in commerce as defined by said act, agreed he will forthwith 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 "wool" or any other word or words of similar import as descriptive of a product which is not composed of "wool" as such word is defined in the Wool Products Labeling Act of 1939; or from the use of said word or words in any way so as to mislead,

¹ For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 901 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, July 1, 1942, to December 31, 1942, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 34 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.

confuse, or deceive the purchaser into the erroneous belief that said product is composed of such "wool" or other woolen fibers.

It was further understood that in respect to any "wool product" subject to the Wool Products Labeling Act of 1939, nothing herein shall be construed as relieving the said Joel Isaacs of the necessity of complying with the requirements of said act and the rules and regulations issued thereunder. (July 9, 1942.)

3511. Dry Shavers—Manufacturer, Laboratories, Value, Price, and Maker.—Clarence E. Taylor, an individual trading as Clark Mechanical Laboratories, engaged in the business of selling and distributing dry shavers 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.

Clarence E. Taylor, in connection with the advertisement, sale, or distribution of his dry shaver 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 "manufacturer" or of any other word or words of similar implication or meaning, so as to import or imply that he makes or manufactures the products offered for sale and sold by him.

2. The use of the word "Laboratories" as part of the trade name under which he operates in the sale of said products in commerce, as defined by the Federal Trade Commission Act; and from the use of the word "Laboratories" in any way, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that he actually owns and operates or directly and absolutely controls laboratories supervised, managed, and directed by scientifically trained persons where the devices sold by him are made or manufactured.

3. The use of either of the statements "\$15.00 Shaver" or "10.75 Shaver" as descriptive of the value of said devices; and from the use of either of said statements so as to import or imply or the effect of which tends or may tend to convey the impression or belief that said devices are customarily sold for the indicated amount in the usual course of retail trade, or that they have such value.

4. The use of the word "Waltham" or of any simulation thereof, as a mark, brand, or designation for said devices, the effect of which tends or may tend to convey the belief to purchasers that said devices are products made or manufactured or sold by the well known, legal owners of the name Waltham. (July 9, 1942.)

3512. Upholstery Fabrics—Qualities, Properties, or Results.—Samuel Berg, trading as Samuel Berg Co., engaged in the sale and distribution of upholstery 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.

Samuel Berg, in connection with the sale and distribution of textile fabrics in commerce as defined by said Act, agreed he will forthwith cease and desist from the use of the word "Sunfast," or any other word or words of similar import or meaning, to describe, designate, or refer to a fabric which changes or loses color or otherwise deviates from the original color thereof when exposed to the light of the sun. (July 13, 1942.)

3513. Salve—Qualities, Properties, or Results.—Anna Plotz, an individual, engaged in the business of preparing a salve having an iodine content, and alleged to be useful as a treatment for goiter and scrofula, sold, and now sells said product under the trade name "Kitrab," 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.

Anna Plotz, in connection with the advertisement, offering for sale, sale, or distribution of the salve product called "Kitrab" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of any statement or representation which, either directly or by inference, imports or implies, or the effect of which tends, or may tend, to convey the impression or belief that the use of said product would constitute a cure, or be a competent treatment for, or preventive, of scrofula or goiter generally or, in fact, any type of goiter other than simple goiter arising from iodine deficiency. The said individual also agreed to cease and desist from the use of any statement or representation which attributes or tends to ascribe to said product, when used by sufferers from goiter or scrofula, or other similar disease, therapeutic values or effects in excess of what it actually possesses. (July 27, 1942.)

3514. Brushes—Qualities, Properties, or Results and Comparative Merits.—Moreck Brush Manufacturing Co., a corporation, engaged in the business of manufacturing paint, floor, and industrial brushes of several kinds, including so-called Moreck Speed-Line Brushes, one type of which is designated "No. 248 Stucco Brush," in competition

with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morck Brush Manufacturing Co., in connection with the offering for sale, sale, or distribution of its paint brushes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use in its advertisements or advertising matter of any statement or representation which imports or implies that said brushes, or any thereof, will give 65 per cent more coverage, wear or last 50 percent longer, or have 20 per cent more carrying capacity than other brushes of comparable size and quality on the competitive market; and from the use of any statement or representation, the effect of which tends, or may tend, to convey the belief or impression to purchasers or prospective purchasers that said brushes possess either coverage, wearing or carrying capacity qualities in excess of what is actually the fact, or that they exceed the coverage, wearing, or carrying capacity qualities of comparable competitive brushes in any represented amount, but which indicated superiority does not in truth exist. (July 27, 1942.)

3515. Food Bags, Bowl Covers, Etc.—Qualities, Properties, or Results.—Kennedy Car Liner & Bag Co., a corporation, engaged in the manufacture of a line of food bags, bowl covers, and similar items under the trade designation “Keko,” 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.

Kennedy Car Liner & Bag Co., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the word “odorless” or other explicit or categorical term of similar implication with reference to or as descriptive of food bags, bowl covers, or other articles of merchandise which are not in point of fact devoid of scent or odor. (Aug. 3, 1942.)

3516. Herbs—Qualities, Properties, or Results and Testimonials.—Yee Why, also known as Henry W. Yee, an individual, trading as Dr. Henry Yee Herb Co., engaged in the sale and distribution of herbs offered for sale and sold as treatments for various diseases and disorders of the human body and, as a means to accomplish the sale thereof, has disseminated advertisements by means of the United States mails, the radio or other media 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.

Yee Why that, in connection with the dissemination of advertising pertaining to his herbs, by the means and in the manner above set forth, agreed forthwith to cease and desist from representing, directly or inferentially, that said herbs can be depended upon to purify the blood or to bring or impart normal, healthy tone to the entire body, or that they constitute a competent treatment or effective remedy for the following diseases or for diseases or conditions indicated by the following symptoms: nerve symptoms or pains, nervousness, neuritis, rheumatism, bowel trouble, infection, gangrene, stomach ulcers, constipation, indigestion, liver trouble, kidney trouble, lack of vitality, insomnia, eczema, overweight, cancer of the bowels, asthma, high or low blood pressure, catarrh of the bladder, lame back, lumbago, back pains, lung trouble, heart trouble, gall stones, or gall bladder trouble, blood trouble, pleurisy, inflamed bladder, coughs, bronchitis, dizziness, piles, colds, sore throat, skin diseases, infected tonsils, anemia, eyestrain, palpitation, ulcers, stomach disorders, paralytic stroke, inflammation of liver, jaundice, nausea, gas pains or gastritis, ovarian trouble, inflammation of intestines, bladder trouble, salpingitis (inflammation of fallopian tubes), arthritis, joint pains, inflammatory rheumatism, sciatic rheumatism.

The said Yee Why further agreed not to publish or disseminate any testimonials containing statements, assertions, or implications contrary to the terms and spirit of the foregoing agreement. (Aug. 3, 1942.)

3517. Paints, Varnishes, Etc.—Composition and Quantity.—Cardinal Paint Corporation, engaged in sale and distribution of paints, varnishes, enamels, and stains in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cardinal Paint Corporation, in connection with the sale and distribution of its said products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing, by the use of statements or labels on containers or in any other manner, directly or by implication, that its paint products contain lead or other ingredients in stated percentages or proportions unless such products do in fact contain such ingredients in the percentages or proportions represented.

(b) Using any quantitative analysis on labels or other advertisements or in any way pertaining to its paint products which does not truthfully and unambiguously designate all ingredients of every kind

contained therein, together with the correct percentage or proportion of each such ingredient.

(c) The use of labels bearing the statement "Net contents one gallon U. S. standard measure" on containers the actual net content of which is less than one gallon; or otherwise representing, directly or inferentially, that the quantity of paint or other substance in any container is in excess of the true content thereof. (Aug. 7, 1942.)

3518. **Razor Blades—Prices.**—Fuller Blade Co., Inc., a corporation, engaged under the trade name "Wonder Blade Company," in the wholesale distribution of razor blades in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fuller Blade 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 on the containers of said 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. (Aug. 7, 1942.)

3519. **Chinese Decorative Cloths—Nature and Composition.**—Ishai Shalom and Elias Hamawy, copartners, trading under the firm name "Shalom & Company," engaged in the importation of Chinese decorative cloths and merchandise 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.

Ishai Shalom and Elias Hamawy, in connection with the offering for sale, sale, or distribution of their cloth products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed, and each of them agreed hereby to cease and desist forthwith from the use on the labels affixed to said products, or in any other way, of the word "linen," or any simulation of the word "linen," either alone or in connection with the word "pure" or with any other word or words, as descriptive of such products not made from the fiber of flax, and from the use of the word "linen" in any way so as to import or imply or the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that said products are

made from flax fibers, when in fact they are made from other than flax fibers. (Aug. 14, 1942.)

3520. Coal Tar Products—Qualities, Properties, or Results, Tests, and Nature.—Reilly Tar & Chemical Corp., a corporation, engaged in the business of manufacturing various coal tar products and also a product formerly designated “Reilly Transparent Penetrating Creosote” but which is presently called “Reilly Transote” and is recommended as a treatment for both wood building construction and for the soil on which a termite infested building stands, and in the sale of said products in interstate commerce in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Reilly Tar & Chemical Corp., in connection with the offering for sale, sale, or distribution of the product called “Reilly Transote,” or by any other name, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use in its advertisements and advertising matter of whatever kind or description, or in any other way.

1. Of any statement or representation which imports or implies or the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that the repellent effectiveness of said product, used as a treatment against termites, is of such permanence as to assure against all future infestations and decay, or is such as will afford permanent or complete protection against termites and decay irrespective of the lapse of time.

2. Of any statement or representation which imports or implies or which tends or may tend to cause the belief that tests of the said product have been made by the Termite Investigations Committee of California which were of such scope or time coverage as to warrant the inference that the effective value of said product would remain unimpaired or endure as complete protection against termites, irrespective of the lapse of time.

3. Of the word “creosote” either alone or in connection with the words “coal tar product,” as descriptive of the product; and from the use of the word “creosote” in any way so as to import or imply that said product is creosote, as that term is understood in the wood preserving trade. (Aug. 20, 1942.)

3521. Rugs—Source or Origin and Reproductions.—Alexander Smith & Sons Carpet Co., a corporation, sole selling agent for C. H. Masland & Sons, also trading as Masland Wilton Mills, engaged in the sale and distribution of rugs in interstate commerce, in competition with

other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Alexander Smith & Sons Carpet Co. and C. H. Masland & Sons, and each of them, agreed that in connection with the sale and distribution of rugs in commerce as defined by the Federal Trade Commission Act, forthwith to cease and desist from:

1. The use of the words or names "Kirman," "Sarouk" or other distinctively oriental name or word or simulation thereof as a designation for, as descriptive of or in connection with rugs which are not in fact made in the countries or localities so designated or implied and which do not contain all of the essential characteristics and qualities of genuine oriental rugs; unless, if properly used to designate the pattern or design only thereof, such words or names are immediately accompanied in equally conspicuous type by a word such as "design" or "pattern," so as to indicate clearly and definitely that only the design or pattern delineated on the surface of the rug is a likeness of an oriental design or pattern as, for example, "Kirman design." or "Sarouk pattern."

2. The use of distinctively oriental names or simulations thereof and/or illustrations depicting oriental figures or scenes as a designation for or in connection with rugs other than oriental rugs in any manner the effect of which tends or may tend to cause the belief or impression that said rugs are oriental rugs.

3. The use of the words "Sarouk reproduction," "reproduction of an ancient Sarouk original," or other word or words of like import or meaning as descriptive of or in connection with rugs which are not in fact reproductions of the types named, that is, true counterparts or reconstructions thereof in all particulars. (Aug. 20, 1942.)

3522. Chicks—State Government Connection or Supervision.—Simon Louws, an individual, trading as Evergreen 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.

Simon Louws, in connection with the sale and distribution of his chicks in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing, directly or inferentially, by the use of the words "Member * * * Washington State Poultry Improvement Association," or in any other manner, that he is a member or that his hatchery is under the supervision of the Washington Poultry Improvement Association. (Aug. 21, 1942.)

3523. Pillows—Composition.—C. Lannis Frazier, an individual, trading as the Feather Mills, engaged in the manufacture of pillows and in the sale and distribution thereof under various brand names 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.

C. Lannis Frazier, in connection with the offering for sale, sale, or distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the term "Gray Goose Down" on labels affixed to said product, or in any way as descriptive of such of said products as actually are not wholly 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 convey the impression or belief that the said products are filled wholly with down or that they do not contain any material other than down. The said individual also agreed to cease and desist from stating or representing that the filling of said products consists of a designated amount of down, when in fact, the down content of said products is of less amount than that indicated. (Aug. 21, 1942.)

3524. Pianos—Sacrifice Sales.—Collins Piano Co., a corporation, located at Greenville, Tex., also having branch sales offices in other cities and towns of said State, including one at Texarkana, Tex., engaged in sale and distribution of pianos, both new and used, in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships 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 Piano 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 from representing that it has, and is offering for sale at any particular place, locality, or community, or in the vicinity thereof, as indicated by, or may be fairly inferred from, its advertising or sales talks in connection therewith, any used or repossessed piano or other product on which a balance is represented to be due, unless and until the said corporation, or its duly accredited agent or representative, actually has, and is offering for sale at such place, locality, or community, or in the vicinity thereof, such used or repossessed piano, on which there is a balance due said corporation as alleged and represented. (Aug. 27, 1942.)

3525. **Peat—Nature.**—Conrad Tardif, an individual, trading as Tardif Domestic Peat Sales Co., engaged in the business of mining, drying, preparing, and packing peat obtained from peat bogs at Delafield, Wis., and in the sale thereof in interstate commerce, in competition with other individuals, firms, and partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Conrad Tardif, in connection with the advertisement, 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 words "peat moss" 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 purchasers or prospective purchasers that said product is moss peat, that is to say, a product consisting chiefly of the decomposed stems and leaves derived from species of Sphagnum mosses. (Aug. 27, 1942.)

3526. **Electrical Switches—Composition.**—General Automotive Specialty Co., Inc., a corporation, engaged in the sale and distribution in interstate commerce, of switches for use in connection with electrical devices or equipment, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

General Automotive Specialty Co., Inc., in connection with the sale and distribution of its electrical switches in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the words "Bakelite Base" as a designation for or as descriptive of any switch not equipped or provided with a bakelite base, and from the use of the word "Bakelite" either alone or in connection with any other word or words to designate or describe any part of an electrical switch not composed of bakelite. (Sept. 4, 1942.)

3527. **Sportswear, Including Sweaters—Composition and Source or Origin.**—The Puritan Knitting Mills Corporation, engaged in the manufacture of sportswear including sweaters, 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 Puritan Knitting Mills Corporation, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of any yarn, garment, or fabric made of wool or simulating wool, agreed forthwith to cease and desist from using the words or terms "Shetlana" or "Shetlanas" or other word or term connoting "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 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 The Puritan Knitting Mills Corporation 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. (Sept. 4, 1942.)

3528. Women's Coats—Composition.—Spiegel, Inc., a corporation, engaged in the sale and distribution of merchandise including women's 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.

Spiegel, Inc., 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 the—

(a) Use of the term "Fur Fabric" as descriptive of garments manufactured from the fabrics composed of fibers other than fur; and from the use of the word "fur" or any fur connoting word or any other term, designation, or representation, either alone or in connection with the word "Fabric" or other word, 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 garments are made or manufactured from the fur or fur-bearing animals or from a fabric made of fur.

(b) Advertising, selling, or distributing garments composed of fibers other than fur under any representations or conditions of deceptive concealment whereby purchasers or the consuming public

are or may be misled into buying such garments in the belief that they are composed of fur.

It is further understood that in respect to any "wool product" subject to the Wool Products Labeling Act of 1939, nothing herein shall be construed as relieving the said Spiegel, Inc., of the necessity of complying with the requirements of said act and the rules and regulations issued thereunder. (Sept. 4, 1942.)

3529. Monuments and Grave Vaults—Qualities, Properties, or Results.— Edwin F. Nickol, Inc., a corporation, engaged in the sale and distribution in commerce of monuments and grave vaults including reinforced concrete vaults supplemented with either marble or granite covers, 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.

Edwin F. Nickol, 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 the use of any statement or representation, the effect of which tends or may tend to convey the belief or impression that its burial vaults or its memorials are everlasting or will endure forever; or that the carving on such memorials will forever withstand the ravages of time and weather. (Sept. 4, 1942.)

3530. Rat and Mouse Poison—Qualities, Properties or Results, Success, Use, or Standing, Comparative Merits, Guaranteed, Etc.—Felix Girard Co., Inc., a corporation, engaged in the manufacture of insecticides including a rat and mouse poison designated "Red Cross Rat and Mouse Embalmer," 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.

Felix Girard Co., Inc., in connection with the sale and distribution of its rat and mouse poison in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from: (a) The use of the word "Embalmer" or any other word or words of like meaning as a designation for or as descriptive of a product which, when fed to rats or mice, will not embalm their bodies, that is, preserve such bodies and prevent the decay thereof; (b) Representing, by statement such as "World's Leading Rodenticide," that said product leads all other rat and/or mouse poison throughout the world either in volume of sales or merit; (c) The use of the statement "Each pound of the Embalmer is guaranteed to clear 5,000 square feet of infested floor space," or any other statement or representation to

the effect that said product can be depended upon to destroy or eradicate all rats and/or mice in or from buildings or the floors or walls thereof; (d) The use of the word "Guaranteed" or any other word or words of similar meaning in connection with the advertising, offering for sale, or sale of its product, unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security; and from the use of any guaranty unless strict and complete performance be made therewith; (e) The use of any unwarranted statement or representation having the tendency or capacity to disparage or discredit competitors. (Sept. 9, 1942.)

3531. Luggage—Prices, Wholesaler, Manufacturer, Etc.—Joseph Singer, an individual, trading as Savoy Luggage Shop, as Savoy Luggage Manufacturing Co. and as Savoy Trunk & Leather Goods Manufacturing Co., engaged in the sale and distribution of luggage 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.

Joseph Singer, in connection with the sale and distribution of his merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from: (a) Representing, as the customary or regular retail prices of his merchandise, prices which in fact are fictitious and in excess of the prices at which such merchandise is regularly and customarily offered for sale or sold at retail; or using fictitious price labels or markings on said merchandise or the packaging thereof; (b) Representing, directly or inferentially, that the prices at which he actually offers for sale or sells his merchandise constitute a discount to purchasers when, in fact, said prices are the usual and customary prices at which he sells such merchandise in the normal and usual course of business; (c) Designating, describing, or representing his business as a wholesale business; or representing, directly or inferentially, that the prices at which he sells his merchandise are wholesale prices; (d) Using or disseminating any so-called discount cards 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 discount, deduction, or other material financial or trade advantage based upon the actual prices at which such merchandise is usually and customarily sold; (e) The use of the word "Manufacturing" or other word or words of like meaning as part of his trade name or names; and from the use of such word or words 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 he actually owns and operates or directly and absolutely controls the factory or factories in which merchandise offered for sale or sold by him is made or manufactured. (Sept. 9, 1942.)

3532. **Liquors—Source or Origin.**—Hercules Liquor Products Corp., a corporation, engaged in the rectifying and blending of bottled liquors 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.

Hercules Liquor Products Corp., in connection with the advertisement or labeling of the liquor product referred to above and which is offered for sale and sold in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "Cuba" as part of the trade name for said liquor product or the word "Cuba," either alone or in connection or conjunction with any other word or words or picturization, or in any other way, to designate or as descriptive of said product, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that the rum used in concoction of the product is of Cuban origin or manufacture. If the word "Cuba" is used to designate a liquor product which contains or is made from rum other than Cuban rum, then in that case, it shall be clearly and unequivocally disclosed, as by some other word or words, that the rum used in the making of said product is other than Cuban rum. (Sept. 16, 1942.)

3533. **Felt Hat Bodies—Quality and Used or Second-Hand as New.**—Henry Millinery Import Corp., a corporation, engaged in the wholesale distribution of felt hat bodies 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.

Henry Millinery Import Corp., in connection with the offering for sale, sale, or distribution of its hat body products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Representing that its wool felt, or other products, which are composed in whole or in part of inferior materials or which are imperfect or defective in some, or any way, are of first, standard, or the best quality by failure to stamp on the sweatband, or elsewhere in the absence of a sweatband, in conspicuous and legible terms which

cannot be removed or obliterated without mutilating the stamped portion, a statement that said products are "seconds" or that they are of such other quality below standard as is the fact.

2. Selling or placing in the hands of others for sale fur felt, or other, products composed in whole or in part of used or second-hand materials, under the representation that said products are new, or are composed of new materials, by failure to stamp on the sweatband, or elsewhere, in the absence of a sweatband, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the stamped portion, a statement that said products are composed of second-hand or used materials (e. g., "Second-hand," "Used," or "Made-over").

3. Representing in any manner that products made in whole or in part from old, used or second-hand materials are new or are composed of new materials or that products which are not of first, standard, or the best quality, are of such quality or that they are of a quality in excess of their merit.

It is understood that no provision contained in this agreement, so far as the same refers to wool products, 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. (Sept. 16, 1942.)

3534. Photographs and Picture Frames—Nature, Prices, Terms, and Conditions, Artist, Guarantee, Etc.—Alma Mercer, trading as Sunset Art Studios, and Otto A. Juettner and Frank Schultz, individuals, engaged in the sale and distribution of photographs and picture frames 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.

Alma Mercer, Otto A. Juettner, and Frank Schultz, 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:

(a) Using the word "painting" or other word of like meaning either alone or in connection or conjunction with any other word or words as a designation for or as descriptive of colored or tinted photographs or pictures produced from a photographic plate, film, base, or impression, or in any way so as to import or imply that their said pictures are oil paintings or are paintings.

(b) Representing that the price or prices at which they offer for sale and sell their pictures is an introductory, special, or reduced price.

(c) Representing that pictures selling for \$3.98 formerly sold for \$20, or that their pictures formerly sold for a price in excess of the usual and customary price at which they actually have been sold by them.

(d) Offering for sale or selling pictures so shaped or designed that they can be framed only in odd-style frames or in frames obtainable only from said individuals unless, at the time such pictures are offered for sale, the prospective purchasers are definitely and unambiguously apprized of the fact that, by reason of the shape or design of such pictures, frames therefore are of an odd style, the price of which is materially in excess of that of frames of a conventional style, and/or are only obtainable from said individuals.

(e) Withholding or refusing to deliver to purchasers, pictures made by the aforesaid individuals after payment has been made therefor, unless any and all the terms and conditions under which such delivery is withheld have been fully disclosed to and accepted by purchasers at the time such pictures originally were ordered.

(f) Representing, directly or inferentially, that any of said individuals or a sales representative or other employee is a "Field Artist" or an artist.

(g) The use of the word "guaranteed" or any other word or words of like meaning in connection with the advertising, offering for sale or sale of their products, unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security. (Sept. 18, 1942.)

3535. Burial Vaults—Qualities, Properties, or Results, and Guarantee.—Julius Giorgi and Louis Giorgi, copartners trading as Superior Vault Co., engaged in the manufacture of reinforced concrete burial vaults 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.

Julius Giorgi and Louis Giorgi, and each of them, in connection with the sale and distribution of their burial vaults in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that such vaults are everlasting or will endure forever; that they are permanently waterproof or are absolutely resistant to condensation; or that they will afford or assure permanent protection to caskets or bodies enclosed therein.

(b) The use of any so-called warranty or guaranty agreement that imports or implies that such vaults are guaranteed for any period

of time greater than that which can reasonably be estimated as the time during which said copartners will be capable of complying with the provisions contained in such agreement. (Sept. 18, 1942.)

3536. **Hair Goods, Cosmetics, Etc.—Qualities, Properties, or Results and Composition.**—Isidore Rosen, also trading as Howard Wig Co., an individual, engaged in the sale and distribution of hair goods, cosmetic preparations, and related products 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.

Isidore Rosen, 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 above set forth, of the preparations designated Nadine Flesh Soap, Nadinola Bleaching Cream, High-Brown Cold Cream, Overtons High-Brown Bleach Ointment, Aida Hair Pomade, High-Brown Hair Grower, Apex Hair Preparation, Apex Pomade, Apex Tar Oil Special, Apex Scalp Cream, Herolin Beauty Soap, New Herolin Double Strength Skin Whitener, Herolin Double Strength Quinine Hair Dressing, Mme. C. J. Walkers Hair Preparation, Mme. C. J. Walkers Tetter Salve, and Mme. C. J. Walkers Temple Grower, or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or names or any other name or names, he will forthwith cease and desist from:

1. Representing, directly or inferentially:

(a) That healing will be accomplished by the use of Nadine Flesh Soap.

(b) That Nadinola Bleaching Cream will clear away freckles or muddy sallow skin or is capable of whitening the skin.

(c) That High-Brown Cold Cream is a skin food.

(d) That Overtons High-Brown Bleach Ointment is an effective treatment for pimples, blackheads, eczema, or other skin diseases.

(e) That Aida Hair Pomade encourages the growth of hair or is a competent treatment for dandruff.

(f) That High-Brown Hair Grower will grow hair or is a competent treatment for dandruff.

(g) That Apex Hair Preparation is an effective treatment for dandruff or for thin or falling hair; that it nourishes and stimulates the hair roots; that it produces a healthy quick growth of hair; or causes the hair to thicken at the temples.

(h) That Apex Pomade is an effective treatment for short hair, thin hair, falling hair, or thin temples or that it constitutes an adequate treatment for scalp eruptions generally.

(i) That Apex Tar Oil Special accelerates the growth of hair.

(j) That Apex Scalp Cream nourishes the scalp or stimulates the growth of hair.

(k) That Herolin Beauty Soap is an effective treatment for or will end blackheads, pimples, and other skin disorders.

(l) That New Herolin Double Strength Skin Whitener is effective in removing blackheads or as a treatment for tetter or eczema.

(m) That Herolin Double Strength Quinine Hair Dressing is effective as a scalp or skin tonic; that it will promote the growth of hair or make the hair grow soft, long, and luxuriant; or that it is an effective treatment for dandruff.

(n) That Mme. C. J. Walkers Hair Preparation, Mme. C. J. Walkers Tetter Salve, or Mme. C. J. Walkers Temple Grower are hair growers or that the use of any thereof is effective in promoting the growth of hair.

(o) That Overtons High-Brown Bleach Ointment or New Herolin Double Strength Skin Whitener is an effective treatment or remedy for ringworm generally; or that either of said preparations is indicated as an application for all cases of ringworm or for ringworm generally unless, in direct connection with such representation and in equally conspicuous type, it be clearly indicated that the effectiveness of such application is limited to that of temporarily affording relief from the symptoms thereof.

2. The use of the words "Hair Grower" or "Temple Grower" as part of the trade name or names of any of such products; and the use of the word "grower" either alone or in conjunction with any other word or words in any manner so as to import or imply that said product or products is effective in producing hair growth.

3. The use of the term "Vitamin F" as a designation for or as descriptive of any of the content or any part thereof of any product advertised, sold, or distributed by it; or otherwise designating any ingredient by a purported scientific name or term not recognized by the prevailing weight of authorities in such field of science. (Sept. 22, 1942.)

3537. Bomb Extinguisher—Qualities, Properties, or Results and Government Indorsement, Approval, and Tests.—Alert Safety Products Corp., a corporation, engaged in the sale and distribution in commerce between and among the various States of the United States of a product designated "Sure-Out" purportedly for use in extinguishing magnesium bombs, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Alert Safety Products Corp., in connection with the sale and distribution of its said product in interstate commerce, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that said product has been proven to be effective in extinguishing or will extinguish magnesium fire bombs in homes or elsewhere when in contact with combustible material.

(b) Representing, directly or inferentially, by the use of any statement such as "Tested by United States Government Agencies" or by depictions or in any other manner that said product has been approved, endorsed, or recommended by any department or agency of the United States Government.

(c) The use of statements to the effect that no dangerous gases or after odors result from the use of said product. (Sept. 22, 1942.)

3538. Milk Filter Disks—Composition, Comparative Merits and Qualities, Properties, or Results.—National Automotive Fibers, Inc., a corporation, engaged in the manufacture of milk filter disks such as are used in the dairy industry in the straining of milk to remove particles of foreign matter therefrom and in the sale of said disks in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 Automotive Fibers, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its milk filter disks in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith—

1. From the use of the words "non-cotton" as descriptive of its said disks; and from the use of the words "non-cotton" in any way so as to import or imply that the fabric of which said disks is composed contains no cotton.

2. From advertising, branding, labeling, invoicing, selling or offering for sale products composed in whole or in part of rayon without disclosing, by the use of the word "rayon," the fact that such products are composed 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.

3. From stating or representing that the said National disk filters milk twice as fast as ordinary cotton disks or that the milk filtering speed of the said National disk exceeds that of ordinary cotton disks in any designated amount in excess of what is actually the fact.

4. From stating or representing that its said disk traps all dirt or sediment, or that it prevents all foreign matter from passing there-through, or that the use of said disk assures a cleaner milk supply than can be accomplished by the use of any cotton disk. (Sept. 23, 1942.)

3539. **Black-out Material and Equipment—Government Approval, Connection, and Endorsement.**—Armor Insulating Co., also trading as Defense Blackout Co., a corporation, engaged in the sale and distribution of black-out material and equipment 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.

Armor Insulating Co., in connection with the sale and distribution of its black-out material and equipment in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the trade name "Defense Blackout Company"; and from the use of the word "Defense" in any manner the effect of which causes or has the tendency or capacity to cause the belief or impression that said corporation or its said selling agency is an agency of the United States Government.

(b) Representing, directly or inferentially, by the use of statements such as "meet all the requirements of the Army, Navy, and Civilian Defense" or in any other manner, that its said products have been approved, endorsed, or recommended by the War Department, the Navy Department, the Office of Civilian Defense, or any other department or agency of the United States Government. (Sept. 23, 1942.)

3540. **Photographs—Prepared for Exhibition and Special Prices.**—Pach Bros., a corporation; Alfred Pach, also trading as Pach Studios, an individual, at same address as that of said corporation and also is president and treasurer of such corporation; said corporation and individual, engaged in the sale and distribution of photographs, including miniatures designated "goldtone miniatures" 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.

Pach Bros. and Alfred Pach, individually and trading as Pach Studios, and each of them, in connection with the sale and distribution of their photographs in commerce as defined by the Federal Trade Commission 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 exhibition has been prepared for exhibition purposes or displayed at an exhibition.

(b) Representing, directly or inferentially, that miniatures or photographs produced for or ordered by customers or prospective customers are made from negatives found to be "admirably adapted" to "goldstone miniatures" for exhibition purposes or are made from negatives specially selected by reason of their outstanding merit or quality.

(c) Representing that their miniatures have ever sold for \$75, or for any amount in excess of that for which they actually have been sold by them.

(d) Representing as the customary or regular price of such miniatures, any price which is in excess of the price at which they have been customarily or regularly sold by them in their usual and normal course of business.

(e) Representing that the price at which their miniatures are offered for sale constitutes a reduced or special price, when in fact such price is the usual or customary price at which such miniatures are offered for sale and sold by them in their normal and usual course of business. (Oct. 1, 1942.)

3541. Photographs—News or Press Use.—National Galleries of New York, Inc., a corporation, and Randolph Fajen, also trading as Continental News-Photo Service and as Pach Studios, an individual, at the same address as that of said corporation, and also is president and treasurer of such corporation; said corporation and individual, engaged in the sale and distribution of photographs 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.

National Galleries of New York, Inc., and Randolph Fajen, individually and trading as Continental News-Photo Service and as Pach Studios, and each of them, in connection with the sale and distribution of their photographs in commerce as defined by said act, agreed forthwith to cease and desist from using the word "News" or any other word or term of similar import or meaning in the trade name "Continental News-Photo Service," or as part of any other trade or corporate name to designate or describe a business which principally is that of selling photographic prints to persons photographed; representing or implying in any manner to any prospective customer that they or their sales representatives or agents are news or press photographers; or representing that any photograph solicited by them is for press or publicity purposes, unless such photograph actually is for news or press use. (Oct. 1, 1942.)

3542. **Motion-Picture Films—History.**—Nu-Art Films, Inc., a corporation, engaged in the lease and/or sale and distribution of 16-millimeter motion-picture films in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Nu-Art Films, Inc., in connection with the lease and/or sale and distribution of its motion-picture films in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the words "In His Steps" as a designation or title for, or in connection with, the advertising or featuring of a motion-picture film which is not in fact an adequate adaptation or film version of the book entitled "In His Steps," written by Charles M. Sheldon, and from the use of such words, either alone or in connection with any other word or words in any way so as to import or imply, or which tends or may tend to cause the belief or impression, that such motion-picture film is an adaptation or film version of said book. (Oct. 5, 1942.)

3543. **Painters' Drop Cloths—Weight.**—Isadore Boshnack and Samuel Boshnack, copartners, trading as Brooklyn Overall Co., engaged in the manufacture of painters' drop cloths, among other things, 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.

Isadore Boshnack and Samuel Boshnack, in connection with the offering for sale and sale of their drop cloths in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "ten ounces" as descriptive of the average weight per square yard of said merchandise, and from the use of the said words or of any other weight-indicating words, term, or expression so as to import or imply, or the effect of which tends or may tend to convey the impression or belief, that the material of which said cloths are made is of an average weight per square yard other than what is actually the fact. (Oct. 5, 1942.)

3544. **Billfolds and Other Leather Goods—Manufacturer.**—Harry P. Behrman and Morris Behrman, copartners, trading as Columbia Manufacturing Co., engaged in the sale and distribution of billfolds and other leather goods in interstate commerce, in competition with other partnerships and with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and

desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry P. Behrman and Morris Behrman, and each of them, in connection with the sale and distribution of their merchandise in commerce as defined by said act, agreed forthwith to cease and desist from the use of the word "Manufacturing" or other word or words of like meaning as part of their trade name; and from the use of the words "Manufacturing," "Manufacturers," "We make," or other word or words of like meaning in any manner so as to import or imply, or the effect of which tends or may tend to convey the belief or impression, that 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. (Oct. 7, 1942.)

3545. Mailing Lists—Endorsements, Sponsorship, or Approval.—Jerome J. Rosette, an individual, trading as National Educational Board, Educational Information Bureau, Educational Information Association, and Club Mailers, engaged in soliciting, obtaining, and disseminating in interstate commerce so-called mailing lists consisting of lists of names of high-school graduates, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jerome J. Rosette, in connection with the obtaining and/or selling so-called mailing lists or lists of names in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the trade names "National Educational Board," "Educational Information Bureau," or "Educational Information Association"; and from the use of any statement or representation the effect of which is to import or imply that his said business is conducted by or under the supervision or control of any National or State educational board or bureau or by any board, bureau, or association of schools or colleges.

(b) Representing, directly or inferentially, by the use of the phrase "approved by the New York Board of Education" or by the use of any other statement or representation, that the business conducted by him has been approved or endorsed by the New York Board of Education or by any Federal, State, or other educational board, bureau, or department. (Oct. 7, 1942.)

3546. Pharmaceutical Preparations—Scientific or Relevant Facts, Qualities, Properties or Results, and Composition.—Andre Tempe, an individual, trading as Master Vita-Min Laboratories, engaged in the sale

and distribution in interstate commerce of pharmaceutical preparations, including products designated "Dulse-Dene," "Vita-Broth," "Garlo-Min," "Vege-Molen," "Vita-Lax," and "M-7," offered for sale and sold as treatments for various diseases and disorders of the human body, 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.

Andre Tempe, 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 above set forth of the pharmaceutical preparations designated "Dulse-Dene," "Vita-Broth," "Garlo-Min," "Vege-Molen," "Vita-Lax," and/or "M-7" or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or names or any other name or names, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that only organic compounds of iodine are nutritionally effective or that organic iodine is the only kind of iodine that the body can assimilate; that the administration of iodine preparations will increase immunity to disease or that the use of such preparation in combination with vitamin A will result in improved vitality; or that the product designated Dulse-Dene constitutes an adequate treatment for nervousness or arthritis, that its use causes improved vitality or remarkable results in school in the case of school children, or that it is effective in restoring the natural color to gray hair.

(b) Representing by statements such as "The Standard American meals * * * are practically always starving in some minerals or others," that the American dietary is deficient in minerals; or representing, directly or inferentially, that it is impossible to secure adequate nourishment from the customary articles of diet, that minerals in the form of inorganic salts are not nutritionally effective, or that it is impossible to obtain a sufficient mineral intake from various vegetables unless they have been subjected to a special treatment such as is used in preparing the vegetables contained in Vita-Broth.

(c) The use of statements or representations to the effect that the product Garlo-Min, due to its dried garlic or other content, will have any therapeutic effect when used as a treatment for high blood pressure; that said product is a preventer of disease, a promoter of good health, or adds to "longevity for man"; that it shows excellent results in lowering blood pressure, combating fermentation, detoxifying the colon, or soothing the nervous system; or that it is of any value as a therapeutic agent.

(d) Representing, directly or by implication, that the daily use of garlic produces lower blood pressure; that garlic is a specific for the treatment of high blood pressure or arteriosclerosis; that the nationals of any country maintain perfect health due to their daily meals of garlic; that the use of garlic promotes longevity, detoxifies the colon, soothes the nervous system, combats fermentation, promotes intestinal flora, or is generally helpful to the endocrine system; that garlic is antiinfective or youth-preserving; that the use of said product has a favorable influence in arteriosclerosis or high blood pressure; or that it is a source of vitamin D.

(e) Representing, directly or inferentially, that "okrin" neutralizes the acid in the stomach or possesses antacid qualities; that okra is alkaline in reaction, is composed of mucin, or that the demulcent or coating properties thereof make it an effective protecting agent for gastric or duodenal ulcers; that either okra or the product designated Vege-Molen is an effective treatment or competent remedy for stomach ulcers, duodenal ulcers, colitis, chronic constipation, hemorrhoids, or acid stomach; or that cancer generally results from colon irritation.

(f) The use of statements to the effect that Vita-Lax is free from drugs; that it prevents hyperacidity or eliminates or prevents toxemia; that the use thereof prevents intestinal putrefaction or promotes or assures regularity; or that said product is not habit-forming.

(g) Representing that vitamin A can be depended upon as antiinfective, to promote tissue formation and healthy skin, to build resistance against colds and infection, and to promote normal eyesight; that vitamin B can be depended upon to overcome nervousness and irritability; that vitamin C can be depended upon to maintain health of teeth and gums and to prevent pyorrhea; that vitamin E can be depended upon to promote muscular normalcy and vigor, to help prevent anaemia, and to help iron metabolism; that vitamin G is a natural promoter of a clear skin; or that the product M-7 by reason of its vitamin or other content constitutes a competent treatment or effective remedy for any of such diseases, symptoms, or conditions.

(h) The use of the term "vitamin F" as a designation for or as descriptive of the content or any part thereof of any product advertised, sold, or distributed by him; or otherwise designating any ingredient by a purported scientific name or term not recognized by the prevailing weight of authorities in such field of science.

(i) Representing, directly or inferentially, that a preparation containing vitamins A, B, C, D, E, and G constitutes an adequate treatment for nervousness, insomnia, or menstrual deficiencies or that it compensates the endocrine system or overcomes the distressing symptoms of the menopause; or that the standard American diet generally is devoid of the necessary vitamins. (Oct. 9, 1942.)

3547. Drug Preparations—Qualities, Properties or Results, and Safety.—Allied Pharmacal Co., Inc., a corporation, engaged for some time past in the sale of numerous drug preparations in interstate commerce, said business being conducted under the following trade names: Erie Laboratories, Inc., Avon Pharmacal Co., Victor Drug Products, Mason Pharmacal Co., Mack Pharmacal Co., Dale Drug Products Co., and Murray's, causing said preparations, when sold, to be shipped from its place of business in the State of Ohio to purchasers thereof, as retail druggists, located in other States and there engaged in the sale of said preparations to the consuming public. The following listed products have been so sold:

Lee's O. B. Tablets (also sold under the name Lee's Obesity Tablets).

Quits (also sold as Chexs, Halts, and Breaks).

Murray's Procon Tablets (also sold as Dale's Urotone Tablets RLD Procon Tablets, Hite's Inco-Tablets, Mack's Inco-Tablets).

Elco-Hepo (Hepatic) Tablets (also sold as Murray's Hepo Tablets and Hite's Okay Hepo Tablets).

Hay Fever and Asthma Preparations (in both tablet and liquid form).

L. H. C. Lee's Herbal Compound.

Elco Iocin Tablets (also sold as Dale's Salicol Tablets, Grabill's Tablets, Hart's Tablets).

Furmas (also sold as Mack's Mozel).

Elco Exora Salve and Liquid (also sold as Murray's Exora and Mack's E. Z.).

The said Allied Pharmacal Co., Inc., 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.

Allied Pharmacal Co., Inc., agreed to cease and desist forthwith from the use, or from supplying to others for their use, of advertising or printed matter, which it disseminates by United States mails or by any means in commerce, as commerce is defined by the Federal Trade Commission Act, wherein it is stated or represented, directly or inferentially:

1. That the preparation designated Lee's O. B. Tablets, or by any other name, will cause the user thereof to lose weight consistently at the rate of 3 to 4 pounds a week or 7 to 10 pounds in only 2 weeks, or in any other amount during a stated period of time, or at all, or that the use of said preparation is an effective way to permanently reduce weight or to increase the user's vitality.

2. That the preparation designated Quits, or by any other name, would be of value as an effective means to stop, cure, or overcome the liquor habit, or that it is tasteless and harmless.

3. That the preparation designated Murray's Procon Tablets, or by any other name, will remove excess acid or neutralize waste matter, or that it is of any value in the treatment of prostate troubles or of conditions secondary to, or associated with, prostate or urinary disorders, such conditions including all of the symptoms referred to in the above advertising pertaining to this preparation.

4. That the preparation designated Elco Hepo (Hepatic) Tablets, or by any other name, is a remedy for habitual constipation, jaundice, or gall stones, or that it would overcome the cause of constipation, headaches, dullness, dizziness, a general unfitness, marred complexion, or poor eyesight, or that it would have any effect other than to offer relief such as may result from temporary evacuation.

5. That either form of the preparation designated Hay Fever and Asthma Preparation is a remedy or cure for such disorders as hay fever, asthma, sinus, or summer colds, or that it would be of value other than to afford temporary relief from the symptoms of such disorders.

6. That the preparation designated L. H. C. Lee's Herbal Compound has or possesses such therapeutic value or properties as would cause the restoration of new strength, vigor, or pep to persons suffering from nervousness or lack of ambition or who are run-down because of overwork, excessive eating, or too strenuous living, or that said preparation would be of value other than to tend to stimulate the appetite and to act as a mild analgesic and a mild cathartic or laxative.

7. That the preparation designated Elco Iocin Tablets, or by any other name, is a remedy, competent treatment, or cure for such disorders as rheumatism, arthritis, lumbago, gout, sciatica, neuralgia, neuritis, or swollen joints, or that it would be of value other than to afford temporary and partial relief from muscular pains and aches caused by such disorders. Said corporation also agreed to cease and desist from stating or representing that the said preparation will not cause gastric disturbances in any instance of its use.

8. That the preparation designated Furmas, or by any other name, is a remedy for stomach disorders generally, that it would be effective to relieve distress caused by loss of appetite, sleeplessness, and dizziness where not due to constipation, or that it would be of value other than to afford temporary relief from constipation and headaches caused by constipation.

9. That the preparation designated Elco Exora Salve and Liquid, or by any other name, is a remedy or cure for skin diseases, or that it will clear up disfiguring skin conditions.

The said corporation also agreed to cease and desist from disseminating, or causing to be disseminated, as aforesaid, any advertising pertaining to the preparations designated "Quits," "Hay Fever and Asthma Preparation," "Elco Iocin Tablets," or "Furmas," or any other preparation of substantially the same ingredients or possessing substantially the same ingredients or possessing substantially the same properties, the use of which is potentially dangerous to the health of the user, and which advertising fails to reveal such potential danger; provided, however, that if the directions for the use of the preparation, whether they appear on the label, in the labeling, or in both the label and labeling, contain an adequate warning of its potential danger to health as aforesaid, said advertising need contain only the cautionary statement: CAUTION: Use only as directed. (Oct. 9, 1942.)

3548. **Novelty Jewelry—Qualities, Properties, or Results, Guarantee and Manufacture.**—Jack Roseman, an individual, trading as Jack Roseman Co. and as Jasmur Jewelry Co., engaged in the sale and distribution of novelty jewelry 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.

Jack Roseman, in connection with the sale and distribution of his products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing, directly or by implication, that such jewelry is acidproof.

(b) The use of the word "guarantee" or any other word or words of similar meaning in connection with the advertising, offering for sale, or sale of his products, unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of the nature of the guarantee and exactly what is offered by way of security as, for example, refund or purchase price; and from the use of such word or words, either alone or in connection with any other word or words, as a designation for, as descriptive of, or in connection with any offer, agreement, or writing which is not in fact a bona fide guarantee.

(c) 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 he makes or manufactures the products sold by him or that he

actually owns and operates or directly and absolutely controls a plant or factory in which such products are made or manufactured. (Oct. 9, 1942.)

3549. Textile Fabrics—Trade Name and Identity of Products.—Herman I. Zagor, Abraham Zagor, and Irving Zagor, copartners, trading as Commodore Woolen Co., engaged in the sale and distribution of textile fabrics including so-called tweed fabrics in interstate commerce, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Herman I. Zagor, Abraham Zagor, and Irving Zagor, and each of them, in connection with the sale and distribution of their textile fabrics in commerce as defined by said Act, agreed forthwith to cease and desist from the use on their tags or labels, or in any manner, of the words "Harrison Tweed" as a designation for or as descriptive of a textile fabric other than genuine Harris Tweed; and from the use of the word "Harrison" or other word suggesting or connoting "Harris" 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 a textile fabric other than Harris Tweed is Harris Tweed.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Herman I. Zagor, Abraham Zagor, and Irving Zagor in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (Oct. 12, 1942.)

3550. Textile Fabrics—Manufacture or Preparation.—Worcester Textile Co., Inc., a corporation, with manufacturing plant and general offices in the city of Greystone, State of Rhode Island, 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.

Worcester Textile Co., Inc., in connection with the sale and distribution of its textile fabrics in commerce as defined by said Act, agreed forthwith to cease and desist from the use of the words "Triple Twist" as a designation for or as descriptive of fabrics the constituent yarns of which do not consist of three distinct strands or plies; and from the use of the word "Triple" or other word connoting a number, in any manner the effect of which tends or may tend to convey the belief or impression that the number of strands or

plies in the yarn of which a fabric is composed is other than is actually the fact.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Worcester Textile Company, Inc., in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (Oct. 12, 1942.)

3551. Photographic Enlargements—Free Product and Special or Limited Offers.—Ward S. Hill and Jessie A. Hill, copartners trading as Geppert Studios, engaged in the photo finishing business and of the sale in interstate commerce of photographic enlargements made from negatives, prints, snapshots, and pictures submitted to them for that purpose by customers, 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.

Ward S. Hill and Jessie A. Hill, and each of them, in connection with the offering for sale, sale, or distribution of their commodities in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. Stating or representing that a photographic enlargement is given free or as a gratuity, when in fact, the prospective recipient of such enlargement, in order to obtain the same, is required to pay a consideration therefor.

2. Failing to clearly and unequivocally disclose the fact in their initial or so-called "get acquainted" or other advertising matter that, in order to avoid delay in the delivery of an alleged "free" photographic enlargement, the customer must assume an expense other than that indicated in such advertising.

3. The use of such words as "sent it today," "may be withdrawn soon," or the word "special," as descriptive of or in connection with an offer of a commodity 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 such offer is of limited duration or that it is other than that customarily made by the said copartners in the usual course of their business. (Oct. 16, 1942.)

3552. Insecticides—Qualities, Properties, or Results and Safety.—Completex Manufacturing Corporation, engaged in the sale and distribution in interstate commerce of insecticides including a preparation designated "Completex" Powder, in competition with other corporations and individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Completex Manufacturing Corporation, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act of the preparation designated "Completex" Powder or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such name or any other name, agreed it will forthwith cease and desist from:

(a) Representing that one application of said preparation will rid premises of infestations by roaches, ants, or other insects for 1 year or for any other length of time in excess of the time that such preparation can be depended upon to control such infestations.

(b) The use of statements such as "The entire and lasting extermination will be completed in approximately two weeks" or otherwise misrepresenting the duration of time required to control infestations of insects generally or any specific kind of insect by the use of such preparation.

(c) Representing that said preparation destroys the eggs of insects or that it can be depended upon to destroy the larvae of insects.

(d) Representing that said preparation is nonpoisonous or that it is harmless to human beings or household pets.

(e) Publishing any testimonial containing statements or assertions contrary to the terms of the foregoing agreement. (Oct. 21, 1942.)

3553. Mineral Water Preparation—Qualities, Properties, or Results and Scientific or Relevant Facts.—Ralph R. Markwood, an individual trading as Armi Mineral Water Co., engaged in the sale and distribution in interstate commerce of a preparation designated Armi Mineral Water, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ralph R. Markwood, in connection with the sale and distribution in commerce as defined by said act, or the advertising by means of the United States mail or other media in commerce, as set forth in said act, of the preparation designated Armi Mineral Water, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such name or any other name, agreed he will forthwith cease and desist from:

1. Representing that the treatment of said preparation by electrolysis imparts any therapeutic value thereto.

2. Representing, directly or inferentially, that said preparation is effective in replenishing an impoverished blood stream, in overcoming congestion in the intestinal tract, in correcting or preventing the accumulation of toxins in the system, in reconstructing inflamed

tissue, in invigorating every organ and cell of the body, in clearing the complexion or in purifying the blood.

3. The use of the statement "scientifically balanced artificial mineral water" as descriptive of such preparation; or the use of any other statement of similar import or meaning in any way so as to connote or imply that the mineral content of said preparation is of such kind.

4. The use of charts or other representations purporting to indicate the function of mineral elements in connection with body nutrition which charts or representations do not correctly set forth the specific roles of such minerals in connection with the functioning or structure of the particular organs of the body as indicated.

5. Representing, directly or inferentially, that said preparation, when taken as directed, will constitute a competent treatment or dependable relief for amenorrhea, anemia, appendicitis, arthritis, asthma, auto-intoxication, backaches, bladder trouble, bronchitis, Buerger's disease, colitis, common colds, diabetes, eczema, fistula, gall bladder trouble, gallstones, goiter, hardening of arteries, hay fever, headaches, heart trouble, high blood pressure, hives, indigestion, inflammation, influenza, insomnia, kidney trouble, liver trouble, loss of appetite, low blood pressure, mal-nutrition, milk-leg, mucous colitis, nervous indigestion, nervousness, nephritis, neuritis, paralysis, pneumonia, prostate gland, pus in kidney, rheumatism, rheumatic fever, rose fever, running sore, run-down condition, septic poisoning, skin rash, sleeping sickness, stomach trouble, streptococcus throat, tonsils, tumors, tuberculosis, ulcers, or varicose veins.

6. Representing, directly or inferentially, that said preparation has any particular virtue in connection with pregnancy or expectant motherhood; or that it is of any value in connection with constipation other than that of affording temporary relief of such condition such as is obtained by the administration of any saline laxative.

7. The use of any testimonial containing statements or excerpts contrary to the terms of the foregoing agreement. (Oct. 21, 1942.)

3554. Radios, Washing Machines, and Electrical Appliances—Distributor, Wholesale Prices, and Cooperative Buying or Purchasing Association.—Benco-Forman Sales Co., Inc., a corporation, engaged in the sale and distribution of merchandise including products such as radios, washing machines, and electrical appliances in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Benco-Forman Sales Co., Inc., in connection with the sale and distribution of its merchandise in commerce as defined by the Fed-

eral Trade Commission Act, agreed forthwith to cease and desist from representing, directly or inferentially, by oral or written representation or in any manner, that it is a distributor; that the prices at which it sells its merchandise are wholesale prices; that firms to which it introduces prospective customers sell their merchandise at wholesale prices; that it is a cooperative buying or purchasing association or organization; or that it is a representative of or purchasing agent for an association or organization of cooperative buyers. (Oct. 23, 1942.)

3555. Publication—Prices, Value, and History.—Nathan Gilbert, an individual trading as Maywood Publishing Co., engaged in the sale and distribution of a publication, designated "Bargain Buyers' Guide," 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.

Nathan Gilbert, in connection with the sale and distribution in commerce as defined by said act, of the publication designated "Bargain Buyers' Guide," or any other publication of like nature or composition, agreed he will forthwith cease and desist from:

(a) The use in his advertising literature or in said publication of any price figure or amount represented as the price of a commodity that does not truthfully indicate the price actually charged therefor by the seller thereof at or immediately prior to the time of issuance of such advertising literature and/or publication.

(b) The use in such publication of any copy or precis of any obsolete advertisement or advertisement that is not current or in effect at the time such publication is issued.

(c) The use in his advertising literature or in said publication of any price figure or amount which purports to be the retail selling price of a product when, in fact, such purported retail selling price is in excess of the price at which said product customarily is sold in the usual and normal course of business, or otherwise is a fictitious price figure.

(d) Representing, directly or inferentially, that such publication in its present form is reliable, dependable, or of value.

(e) Representing that such publication is the result of "almost a lifetime of research work" or otherwise misrepresenting the time, trouble, or expense incident to the preparation thereof. (Oct. 26, 1942.)

3556. Publication—Prices, Value, and History.—E. D. Bebout, engaged in the sale and distribution of a publication, designated "Bargain Buyers' Guide," in competition with other individuals and with cor-

porations, firms and partnerships 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. D. Bebout, in connection with the sale and distribution in commerce as defined by said act, of the publication designated "Bargain Buyers' Guide" or any other publication of like nature or composition, agreed he will forthwith cease and desist from:

(a) The use in his advertising literature or in said publication of any price figure or amount represented as the price of a commodity that does not truthfully indicate the price actually charged therefor by the seller thereof at or immediately prior to the time of issuance of such advertising literature and/or publication.

(b) The use in such publication of any copy or precis of any obsolete advertisement or advertisement that is not current or in effect at the time such publication is issued.

(c) The use in his advertising literature or in said publication of any price figure or amount which purports to be the retail selling price of a product when, in fact, such purported retail selling price is in excess of the price at which said product customarily is sold in the usual and normal course of business, or otherwise is a fictitious price figure.

(d) Representing, directly or inferentially, that such publication in its present form is reliable, dependable, or of value.

(e) Representing that such publication is the result of "almost a lifetime of research work" or otherwise misrepresenting the time, trouble, or expense incident to the preparation thereof. (Oct. 26, 1942.)

3557. Fertilizer — Qualities, Properties, or Results, History and Unique.—William H. Rorer, Inc., engaged in the business of manufacturing a product for use as a fertilizer essentially of the well-known "5-7-5" type, under the name "Plant Dinner," 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.

William H. Rorer, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its fertilizer product, now designated "Plant Dinner," or of any other product of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from stating or representing that said product is a "perfect, all-purpose nutrient," that it will afford "all the food" which is needed by a plant, regardless of its kind and the

character of soil in which it is rooted, that it will provide a "full course meal" for plants generally, or of any other statement or representation of similar meaning or inference, the effect of which tends or may tend to convey the impression or belief to prospective purchasers that the said product contains all such elements as to assure or provide, in each instance of use, that type of food or diet which is appropriate and proper or best suited to the particular needs of each plant treated therewith, and/or such as is necessary due to the nature of the soil in which the plant is rooted. Said corporation also agrees to cease and desist from stating or representing, as through the use of the words "provides solutions to every conceivable gardening problem all the year round," that the use of said product will afford protection to plant life as against the varying climatic conditions throughout the year. It also agrees to cease and desist from representing that the use of said product would be of benefit to "seed growth" or "seed germination" or that it would be a benefit to "any living plant" irrespective of the type of the plant or the soil in which the plant is rooted. It further agrees to cease and desist from the use of the word "new" or of any other word or words of similar implication, as descriptive of said product, so as to impart or imply or the effect of which tends or may tend to cause the belief or impression that its said product was the first or is the only fertilizer to feature a content of vitamins and hormones. (Oct. 30, 1942.)

3558. Rodent Exterminator—Qualities, Properties or Results, Success, Use or Standing, and Chemist.—J. Vaughn Smathers Clark, an individual trading as Seaboard Chemical Co., engaged in the sale and distribution of rodent and insect poisons, including a product designated "Magic Death Rat and Mouse Exterminator," 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.

J. Vaughn Smathers Clark, in connection with the sale and distribution in commerce as defined by said act, of his said rodent poison or any other preparation composed of substantially the same properties, agreed he will forthwith cease and desist from:

(a) The use of the words "Magic Death," "Death," or "Exterminator" as part of or in connection with the trade name of such preparation; and from representing, or placing in the hands of others a means to represent, directly or inferentially, by means of statements, depictions, or in any manner, that said preparation is a competent rat or mouse exterminator, that it will kill rats or mice or that its use is effective in ridding premises of rats or mice.

(b) Representing that said preparation is nationally known or nationally used.

(c) The use of the word "Chemical" as part of his trade name; and the use of the word "Chemical" or "Chemists" or other word or words of like meaning in any manner so as to import or imply that he is a manufacturing chemist or a chemist or that he conducts or operates a chemical company or business. (Nov. 2, 1942.)

3559. **Floor Wax—Qualities, Properties, or Results and Comparative Merits.**—Florence E. Milner, an individual trading as Flexrock Co., engaged in the business of selling household supplies, including a floor wax bearing the trade name "Flexrock Non-Slip Wax," in interstate commerce, in competition with other individuals and with corporations and other 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.

Florence E. Milner, in connection with the advertisement, sale, or distribution of her wax product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed she will cease and desist forthwith from the use of the hyphenated word "non-slip" as part of or in connection with the trade name for said product which is not strictly proof against slipping, and from the use of the said word, or of any other word or words of similar import, the impression or belief to purchasers that the product so referred to, when applied to a floor, would eliminate or do away with all tendency to slip by a person who walks thereon. The said individual also agrees to cease and desist from the use of the statement "last from three to seven times longer than ordinary wax" as descriptive of said product, and from the use of the said statement, or of any other similar statement that imports or implies that said product, when applied to floors, possesses the indicated lasting qualities, when in fact, the said product is not of such durability as to warrant said claim. (Nov. 2, 1942.)

3560. **Airplanes—Capacity and Safety.**—Culver Aircraft Corporation, engaged in the manufacture of airplanes, including an airplane designated "Culver Cadet," which it distributed to franchised distributors, including Russell J. Alley, and caused the distribution of such airplanes in interstate commerce, in competition with other corporations and with individuals, firm, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Culver Aircraft Corporation, a corporation, and Russell J. Alley, an individual agreed that it and he, in connection with the advertisement, offering for sale, and sale of the aforesaid Culver Cadet airplane in commerce, as commerce is defined by the Federal Trade Commission Act, will cease and desist forthwith from the use of the state-

ment "engineered to ten G's" as descriptive of said airplane; and from the use of the said statement, or of any other statement or representation of similar implication, in referring to an airplane offered for sale or sold by it, or by him, the effect of which tends or may tend to cause or convey the impression or belief that the ultimate load which the said airplane is or has been designed to sustain is in excess of what is actually the fact and/or which imputes to said airplane a degree of safety, when operated, that is not warranted by the designed strength. (Nov. 2, 1942.)

3561. Herb Tea—Qualities, Properties or Results, Ailments, Scientific or Relevant Facts, and Safety.—Wladyslaw Ochrymowicz and Theodosia Wandycz Ochrymowicz, individuals trading as Vanola Herb Tea Co., engaged in the sale and distribution in interstate commerce of a medicinal preparation designated "Vanola Laxative Herb Tea," 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.

Wladyslaw Ochrymowicz and Theodosia Wandycz Ochrymowicz, 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 preparation designated "Vanola Laxative Herb Tea" 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, they will forthwith cease and desist from:

(a) Representing, directly or inferentially, that said preparation is an adequate treatment or effective remedy for stomach disorders, headaches, dizziness, or digestive disturbances; or that it has any therapeutic value except as a temporary laxative for the relief of constipation.

(b) The use of statements to the effect that the condition known as sour stomach is caused by temporary constipation or that said preparation is of any value in the treatment of sour stomach.

(c) Representing, directly or by implication, that said preparation can be relied upon to make the individual healthier or that it has any effect in inducing sound sleep.

(d) The use of statements that import or imply that past generations lived longer or were healthier than the present generation.

(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.** (Nov. 2, 1942.)

3562. **Combs and Brushes—Source or Origin.**—Cosby Brush & Import Co., Inc., engaged in the sale and distribution of combs and brushes in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships 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 Brush & Import Co., Inc., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act of combs or other products not produced in London, England, agreed forthwith to cease and desist from the use of the words "Kent of London" as a trade name for said products or as descriptive thereof; and from the use of the word "London," either alone or in connection with the word "Kent" or other word or words, 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 said products were produced in or imported from London, England. (Nov. 9, 1942.)

3563. **Form Letters—Government Connection.**—Clarence Vaden, an individual, trading as Federal Adjustment Bureau, engaged in sale and distribution in interstate commerce of mimeographed, multi-graphed, or printed material consisting of form letters for use in collecting accounts, 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.

Clarence Vaden, in connection with the sale and distribution of his form letters in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the word "Federal" as part of his trade name; and from the use of the said word or any other words of like meaning in any manner so as to import or imply or the effect of which tends or may tend to convey the belief or impression that he is connected or associated with the Federal Government or any agency thereof. (Nov. 9, 1942.)

3564. **Quilts and Pads—Safety, Competitive Products, Comparative Merits, Qualities, Properties or Results, and Special and Limited Offers.**—Louis Katz, an individual, trading as The Sanitary Feather Works, engaged in the business of selling quilts and pads, called "Fethersfluff," in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the fol-

lowing agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Louis Katz, individually, and trading as The Sanitary Feather Works, or under any other name or names, in connection with the offering for sale, sale, or distribution of his commodities in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of any statement or representation in his advertising matter of whatever kind or description, or in any other way, of any statement or representation, the effect of which tends or may tend to cause or convey the impression or belief to purchasers or prospective purchasers—

1. That bedding, such as is now sold on the market in competition with the Fetherfluff commodities, will be harmful to the user thereof.

2. That the use of Fetherfluff commodities will cause the user thereof to enjoy a more healthful, restful, and revitalizing sleep and a more refreshed awakening than he would if he used competitive products such as are now sold on the market.

3. That the use of Fetherfluff commodities would be an effective treatment for or would eliminate, prevent, or overcome such ailments as rheumatism, arthritis, neuritis, heart trouble, asthma, hay fever, or sinus.

4. That the said Fetherfluff commodities would retain their efficiency without any impairment thereof and continue to give the same benefits for 10 years.

5. That the prices for which the said individual offers for sale and sells his commodities are special or reduced or only one-half the prices for which said commodities are customarily sold by him in the usual course of business, or that the offered prices are applicable for a limited time only, when in fact such prices are the usual prices at which the said individual sells such commodities in the normal course of his business. (Nov. 9, 1942.)

3565. Hosiery and Lingerie Preparation—Qualities, Properties, or Results and Manufacturer.—H. A. Langmaid, an individual, trading as H. A. Langmaid Manufacturing Co., engaged in the business of packaging a powder preparation intended for use as a treatment for hosiery and lingerie and which he sold in interstate commerce, in competition with other individuals, firms, and partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

H. A. Langmaid, in connection with the offering for sale, sale, or distribution of said powder preparation 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 "Not-A-Run" as a trade name for said preparation and from the use of the said words or the statement "Prevents Runs and Tears" or any other words or statement of similar meaning or implication, the effect of which tends or may tend to convey the belief that the use of said preparation on fabrics, as silk hosiery or lingerie, will eliminate the possibility of or prevent runs and tears in such fabrics so treated.

2. The use of the word "Manufacturing" or the abbreviation "Mfg." as part of his trade name, and from the use of the said word or the abbreviation thereof in any way so as to import or imply or the effect of which tends or may tend to convey the belief that the said individual makes or manufactures the preparation offered for sale and sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said preparation is made or manufactured. (Nov. 10, 1942.)

3566. Knitting Yarns—Source or Origin, Composition, and Manufacturer.—Emanuel Flock, Manfred J. Flock, Sol M. Flock, Jr., and Della B. Flock, copartners trading as Flock Manufacturing Co., engaged in the business of selling knitting yarns in interstate commerce, in competition with other partnerships and with individuals, corporations, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Emanuel Flock, Manfred J. Flock, Sol M. Flock, Jr., and Della B. Flock, in connection with the advertisement, offering for sale, sale, or distribution of their yarns 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. The use of the word "Scotch," "English" or "Devonshire," "French" or "Shetland" as descriptive of said yarns which are made in the United States of America of domestic wool; and from the use of said words, or any thereof, in any way so as to import or imply that said products are imported from the country or place indicated by the particular word used or that they are made of wool imported from such country or place.

2. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly and unequivocally disclosing the fact the the products contain rayon and, when the products are composed in part of rayon, from failing to disclose each constituent fiber or material by name in the order of its predominance by weight, beginning with the largest single constituent.

3. The use of the word "Crepe" or any other silk-connoting word as descriptive of a product which is not composed of silk, the product of the cocoon of the silk worm.

4. The use of the word "Angora" or "Cashmere" to describe, respectively, a product not composed of the hair of an Angora goat or the hair of a Cashmere goat: *Provided, however*, If the product is composed in substantial part of either the hair of the Angora goat or the Cashmere goat, and the word "Angora" or the word "Cashmere" is used to describe such Angora or Cashmere goat-hair content, then in that case, the word "Angora" or "Cashmere" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said product is not composed wholly of the hair of the Angora goat or the Cashmere goat.

5. The use of the word "Manufacturing" as a part of their trade name or in any other way to describe the business conducted by the said copartners, or the effect of which tends or may tend to convey the belief that the said copartners make or manufacture the products sold by them or that they actually own and operate or directly and absolutely control the plant or factory wherein said products are manufactured, as by spinning, making up, and dyeing the same.

It is understood that no provision contained in this agreement, so far as the same refers to said products, shall be construed as authorized or permitting the labeling, designating, or representing any such product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939. (Nov. 10, 1942.)

3567. Recording Disks—Composition.—Presto Recording Corporation, engaged in the sale and distribution in interstate commerce of recording disks designated "Presto Discs," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Presto Recording Corporation, in connection with the sale and distribution of its recording disks in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing that the bases of said disks are composed of plate glass. (Nov. 10, 1942.)

3568. Fur Garments—Wholesale Prices.—M. M. Kronisch, 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.

M. M. Kronisch, 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 representing, directly or inferentially, that the prices at which he sells or offers to sell his merchandise to the consuming public are wholesale prices; and from the use of any method or device—such as the acceptance of introduction cards requesting that the person introduced be sold merchandise at “wholesale prices”—the effect of which tends or may tend to convey the belief or impression that he sells merchandise to any preferred consumer customer or customers or to the consuming public generally at wholesale prices. (Nov. 17, 1942.)

3569. **Mattresses—Qualities, Properties or Results, Scientific or Relevant Facts, Professional Design, Prices, Etc.**—Burton-Dixie Corporation, a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal place of business and a factory located in Chicago, Ill.; it also maintains factories in Brooklyn, N. Y., and Lansing, Mich., and operates a large number of warehouses throughout the United States, engaged in the manufacture of mattresses and other articles of merchandise, and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, partnerships, 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.

Burton-Dixie Corporation, in connection with the offering for sale, sale, or distribution of its mattresses, or related products, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use, or from supplying to others for their use, of advertisements or printed matter containing any statement or representation which imports or implies, or the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers, that said products, equipped with either of the so-called “Posturite” or “Ortho-Flex” units, are of such construction, scientific or otherwise, as to insure correct posture during sleep to all who may lie or repose thereon, or to users thereof, regardless of their varying heights, body sizes, shapes, or condition during illness or health, their tendency frequently to assume different body positions, or the numerous other variables which of necessity enter into the question of correct posture during slumber.

2. Stating or representing that insomnia and other serious disorders are caused by faulty mattresses; that faulty mattresses interfere with the functioning of the sleeper’s organs, that healthful sleep is not possible on a soft mattress.

3. The use of the term "Ultra Violet Ray Processed," either alone or in connection with the word "vitalized" or of any other term of similar implication, as descriptive of its products, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that said products have been completely sterilized or are sterile or that they have been endowed with therapeutic or health-giving qualities, which, in fact, said products do not possess.

4. The use of labels affixed to said products or on labels furnished by the said corporation to others for attachment 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 impression or belief that the products so labeled or referred to are made in accordance with the design or under the supervision of a doctor of medicine, or that the said products contain special or scientific features resulting from medical determination and services.

5. Offering for sale, selling, advertising, or supplying to its customers for resale, products to which are affixed labels, or from supplying labels to others for affixment to said products, and which labels bear a fictitious price marking that represents or implies that the retail value or price of said products is in excess of the price at which such products are regularly and customarily sold at retail. (Nov. 18, 1942.)

3570. Medicinal Preparation—Qualities, Properties or Results, Professional Endorsement, or Approval, and Safety.—Gramercy Chemical Co., Inc., a corporation; Andrew Borak, an individual, trading as The Roxola Co., with place of business in the city and State of New York at the same address as that of the aforesaid Gramercy Chemical Co., Inc., of which corporation the said Andrew Borak is majority stockholder and president; said corporation and individual, engaged in the sale and distribution in interstate commerce, of a medicinal preparation designated "Zdroj," purportedly for use as a "Herbal-Bitter Tonic," 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.

Gramercy Chemical Co., Inc., and Andrew Borak, and each of them, 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 above set forth, of the preparation designated "Zdroj," 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:

(a) Representing, by the use of the statements "helps digestion," "beneficial in digestive disorders," "recommended by doctors for digestion," or any other statement or representation of similar import or meaning, that said preparation has a favorable influence on the digestive processes.

(b) Representing, directly or inferentially, that such preparation constitutes a competent treatment for debilities of the stomach or liver; that it exerts a stimulating effect upon the secretory glands of the body; that it exerts a tonic effect when used as directed; or that it has any therapeutic effect except as a temporary laxative for the relief of constipation.

(c) Disseminating, or causing to be disseminated, any advertisements 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.** (Nov. 18, 1942.)

3571. **Chicks—Qualities and History.**—Carl R. Daugherty and W. H. Guiss, copartners, trading as Co-Operative Breeding & Hatching Co., engaged in the sale and distribution of chicks 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.

Carl R. Daugherty and W. H. Guiss, and each of them, in connection with the sale and distribution of their chicks in commerce, as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing, directly and inferentially, that chicks offered for sale and sold by them have the strain of prize-winning or champion poultry, or are of "Championship" caliber unless, in direct connection with any such representation, truthful disclosure be made of the fact that such chicks are related to, and of the strain of, losing as well as winning contest entrants.

(b) The use of the statements "Pay Streak AAA Mating Barred Rocks are headed by males that are sons of pedigreed sires whose dams have records of 250 to 293 eggs," "One contest pen of Pay Streak S. C. Reds established the remarkable record of 248 eggs per

hen for 10 hens," "Pay Streak has had TWO National Laying Champions, including all breeds and all contests," or other statement or representation of like meaning; and from any statement or representation, the effect of which tends, or may tend, to convey an erroneous belief or impression with respect to the laying or other records of poultry. (Nov. 23, 1942.)

3572. **Lead Pencils—Comparative Merits.**—Richard Best Pencil Co., Inc., a corporation, engaged in the business of manufacturing lead pencils, and in the sale thereof, under the brand name Futura, in interstate commerce, in competition with other corporations, 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.

Richard Best Pencil Co., Inc., in connection with the advertisement, offering for sale, or sale, of its Futura Pencils in commerce, as commerce is defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the statements that its said pencil "lasts three times as long as the best of competitive pencils," or that its said pencil "actually runs 3.8 times longer than the next best." The said corporation also agreed to cease and desist from the use of either of the aforesaid statements, or of any other statement, the effect of which tends, or may tend, to convey the belief or impression to customers or prospective customers that the "lasting" or "running" qualities of the Futura pencil, when compared with those of indicated competitive products, or on any other basis of computation, are in excess of what is actually the fact. (Nov. 23, 1942.)

3573. **Jewelry—Composition, Size, and Nature.**—Uris Sales Corporation, a corporation, engaged in the sale and distribution of 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.

Uris Sales Corporation, in connection with the sale and distribution of its rings in commerce, as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of pictorial or other representations purporting to illustrate the quantity of gold and/or silver content in its rings which do not accurately and truthfully portray the relative quantities of the gold and silver content thereof.

(b) The use of diagrams or depictions purporting to illustrate the "actual size" of rings which do not in fact illustrate the actual size thereof.

(c) The use of the words "faceted ruby stone" or "faceted sapphire stone" as descriptive of insets which are not in fact rubies or sapphires; and from the use of the word "ruby," "sapphires," or the name of any gem stone in such manner as to mislead or deceive purchasers, prospective purchasers, or the consuming public, into the erroneous belief that the product so designated is a genuine ruby, sapphire, or other gem stone. (Nov. 25, 1942.)

3574. **Fur Garments—Nature.**—Ben Schwartzman, Inc., a corporation, engaged in the sale and distribution of fur garments in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ben Schwartzman, Inc., in connection with the sale and distribution of its fur products in commerce, as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use, in advertisements, or on labels, tags, brands, or other media, of any description, representation, or designation of a fur which deceptively conceals the true name or nature of the fur, with the tendency and capacity or effect, of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(b) Designating or describing furs 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 word of the description shall be immediately preceded, in equally conspicuous type, by the word "dyed" or "blended," compounded with the name of the simulated fur as, for example, "Seal-dyed Coney," "Beaver-dyed Coney," and "Mouton-dyed Lamb." (Dec. 2, 1942.)

3575. **Men's Shoes—Source or Origin, "Hand Made," and Maker.**—Hill Brothers Co., a corporation, engaged in the business of manufacturing men's shoes and in the sale thereof in interstate commerce, causing said products, when sold, to be shipped from its place of business in the Commonwealth of Massachusetts to purchasers thereof, as shoe dealers, including so-called cancelation stores, located in other States and there engaged in reselling said products to the purchasing 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.

Hill Brothers Co., in connection with the offering for sale, sale, or distribution of its products in commerce, as commerce is defined by

the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use of the words "Cross & Cross," in connection with a crown or shield, or the words "The House of McGregor's Ltd.," either alone or in connection with the words "Bespoke Bootmakers," or with any word or words, picturization, or insignia cutomarily identified with the British Isles, as a mark, stamp, or brand name for, or to otherwise purportedly describe or refer to its domestically made products; and from the use of the said words, or combinations, in any way, the effect of which tends or may tend to convey the belief or impression to purchasers that the said products are of British make and/or imported from England.

2. The use of the words "Hand Made," or of any other words of similar implication, as purportedly descriptive of those of said products which are not made by hand.

3. The use of any named concern, as, for instance, "Dominick & Dominick," so as to import or imply, or the effect of which tends or may tend to cause the belief or impression, that said products are products manufactured by or for or in accordance with the specific order of the named concern, when in fact such is not the case. (Dec. 2, 1942.)

3576. Corsets, Foundations, and Belts—Qualities, Properties or Results, Indorsement or Approval, Etc.—The Standard Corset Co., a corporation, engaged in the sale and distribution of corsets, foundations, and belts in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 Standard Corset Co., in connection with the sale and distribution of its corsets, foundations or belts in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner above indicated, agreed forthwith to cease and desist from representing or placing in the hands of others a means to represent, directly or inferentially:

(a) That the use of its said corsets or foundations will result in or cause firm muscles.

(b) That said corsets or foundations will sleek away or remove excess avoirdupois, take inches off the figure, reduce the hips 2 to 4 inches or any other number of inches, or whittle or reduce the waist.

(c) That the use thereof will effect a reduction of bodily tissue or will correct faults, irregularities, or defects of the figure or body.

(d) That the front of the so-called Armmori Belt is fully elastic.

(e) That said belt is made to comply or complies with nature's laws.

(f) That the lower muscle band thereof duplicates the natural muscular wall or restores muscular tone.

(g) That said belt is prescribed by physicians and surgeons for abdominal irregularities. (Dec. 8, 1942.)

3577. Oil Silk and Rayon Fabrics—"Mills" and "Manufacturers."—St. Lawrence Textile Mills, Inc., a corporation, engaged in the sale and distribution of oil silk and rayon 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.

St. Lawrence Textile Mills, Inc., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed forthwith the cease and desist from the use of the word "Mills" as part of its corporate or trade name and from the use of the word "Manufacturers" or other word or words of like meaning in any manner so as to import or imply or the effect of which tends or may tend to convey the belief or impression that it 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. (Dec. 8, 1942.)

3578. Comforter and Blanket Covers—Size and Thread Count.—Oscar Ruckel, an individual, trading as Ruckel Manufacturing Co. engaged in the business of manufacturing comforter and blanket covers, 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.

Oscar Ruckel, 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 said products, on his stationery, or in any other way—

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 term or expression, the effect of which tends or may tend to convey the belief or impression to purchasers or prospective purchasers that the fabric of which said 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

said products are of a 72- by 84-inch size, as the term "Full size" is understood in the trade.

3. Of the stamping "82" x 90'," or of any other purported size indication which is not, in fact, truthfully representative of the actual dimensions of said products. (Dec. 8, 1942.)

3579. Dog Foods—Government Specifications Conformance, Comparative Merits, Qualities, Properties or Results, and Composition.—Old Trusty Dog Food Co., Inc., a corporation, engaged in the sale and distribution of dog foods, including a product designated "Supreme Meal," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Old Trusty Dog Food Co., Inc., 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 above set forth, of its dog food designated "Supreme Meal" or any other product composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other name or names, agreed forthwith to cease and desist from:

(a) Representing, directly or by implication, that the United States Government has adopted general specifications for dog foods, that the product or products offered for sale by it are compounded in accordance with "U. S. Government specifications," or that such product or products are comparable to or superior to dog foods made in accordance with any alleged United States Government specifications,

(b) Representing that said product is "scientifically balanced" or that it constitutes a balanced food or ration for dogs of all breeds and/or ages,

(c) Representing, directly or inferentially, that the vitamin A content of 1 pound of "Supreme Meal" is equivalent to the vitamin A content of one-half pound of spinach or that the vitamin G content of said product is equivalent to the vitamin G content of 20.9 pounds of lean beef or 6.8 pounds of spinach; and from the use of any other comparison which tends or may tend to convey the belief or impression that the vitamin content of its dog food or foods is in excess of the actual vitamin content thereof.

(d) The use of statements such as "1 lb. of Supreme Meal contains as much Vitamin A as 48.4 lbs. lean beef or 43.9 pints fresh whole milk" or "1 lb. of Supreme Meal contains as much Vitamin D as 2,539.6 lbs. lean beef or 267.3 pints fresh whole milk or 2,539.6 lbs. spinach"; and from any comparison of the vitamin content of its product or products with the vitamin content of a food or foods

deficient in the vitamins indicated in any manner the effect of which is to import or imply that said product or products contain a vitamin or vitamins in excess of the actual vitamin content thereof,

(e) Representing that the inclusion of adequate sources of calcium and phosphorus can be depended upon to maintain the alkalinity of a dog's system; that the inclusion of adequate sources of copper, iron, and manganese can be depended upon to produce rich blood in animals that are suffering from some acute or chronic disease which tends to impoverish the blood; or that "Supreme Meal" contains "blood-purifying minerals," or by reason of its mineral or other content, possesses blood-purifying properties,

(f) Representing, directly or by implication, that the feeding of said product to dogs will prevent the occurrence of infectious diseases or will insure the virility, vigor, or health of such animals. (Dec. 8, 1942.)

3580. Luggage—Composition, Nature, Qualities, Properties or Results, Etc.—Samuel J. Holtzman and Gertrude Holtzman, copartners trading as Baltimore Luggage Co., engaged in the sale and distribution of luggage 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.

Samuel J. Holtzman and Gertrude Holtzman, in connection with the sale and distribution of their luggage in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing that the frame or foundation of any article of luggage is made of wood when, in fact, such frame or foundation consists wholly or in part of a product or products other than wood.

(b) Representing that the locks or other hardware of such luggage are brass when, in fact, such locks or hardware are made of a product or products other than brass.

(c) The use of the word "Genuine" or other term or representation of similar import in any way as descriptive of split leather.

(d) Offering for sale or selling any article of luggage made of or containing so-called split leather or leather other than the top grain, 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 to such article in sufficiently secure manner as to remain thereon until the article reaches the ultimate purchaser or consumer after having passed through the ordinary channels of trade.

(e) The use of any statement or representation which has the capacity and tendency or effect of misleading or deceiving the pur-

chasing or consuming public with respect to the grade, quality, quantity, material content, serviceability, nature, origin, size, construction, manufacture, processing, or distribution of any article of luggage, or with respect to the kind, grade, weight, thickness, durability, character or finish of leather, purported leather, canvas, fiber, fabric, or other material of which such product is made in whole or in part, or with respect to the stitching, lining, backing, hardware, or fittings used therein. (Dec. 8, 1942.)

3581. Furniture and Rugs—Used as New, Prices, Source or Origin, Nature, Etc.—Paul Gluck and Bernard Gluck, copartners trading as Paul's Furniture Store, engaged in business as retailers of household merchandise, including furniture and rugs, and in the sale thereof in interstate commerce, in competition with other partnerships and with corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Paul Gluck and Bernard Gluck, in connection with the conduct of their business involving the sale and distribution of merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of advertising or printed matter, of whatever kind or description, which has the capacity or tendency to convey the impression or belief to customers or prospective customers that the merchandise referred to in said advertising or printed matter is new, when in fact, such merchandise has been used or repossessed; that the persons referred to in the advertising or printed matter are in possession of the advertised merchandise and/or have a salable interest therein; that the price for which the merchandise is advertised for sale is the unpaid balance due thereon and/or that it does not exceed the sum remaining unpaid on the furniture by said persons; or that the said advertising or printed matter had been inserted or was published or authorized by said persons. The said copartners also agreed to cease and desist from the use in their advertising or printed matter of the word "Oriental," or of any other distinctively oriental word, or any simulation thereof, as descriptive of or in referring to rugs offered for sale and sold by them in commerce, which are not made or manufactured in an oriental country or locality and which do not contain all of the essential characteristics and qualities of oriental rugs; unless, if such word or words are used properly to designate the pattern or design only of the rugs, such word or words shall be immediately accompanied by a word or words, as "design" or "pattern," printed in equally conspicuous type, so as to indicate clearly that only the design or pattern delineated on the surface of the rug is a likeness of an oriental design or pattern. Said copartners further agreed to cease and desist from the use of

the words "Oriental Reproduction," or of any other words or words of like meaning or import, as descriptive of or in connection with rugs which are not in fact reproductions of the indicated type of rug, that is to say, true counterparts or reconstructions thereof in all particulars. (Dec. 8, 1942.)

3582. Knitting Yarns—Composition.—Bernhard Ulmann Co., Inc., a corporation, engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Bernhard Ulmann Co., Inc., in connection with the sale and distribution of its yarns in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the word "Cassimere" or other term or word connoting cashmere, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to 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 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.

(b) The use of the word "Shetland," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however,* That in the case of a product composed 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.

(c) The use of the word "Angora," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe or refer to 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 and materials: *And further provided,*

however, That in the case of a product composed wholly or in part of Angora rabbit hair, the words "Angora rabbit hair" may be used as descriptive of the product if composed wholly of Angora rabbit hair, or as descriptive of such portion of the product as is composed of Angora rabbit hair.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Bernhard Ulmann Co. Inc., in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (Dec. 11, 1942.)

3583. Miniatures or Photographs—Prepared for Exhibition and Special Price.—Moffett Studio, Inc., a corporation; Sidney M. Barton, who through due legal process has had his name changed from Seymour M. Blaufarb to Sidney M. Barton, an individual, trading as Continental Galleries, said corporation and individual engaged in the business of selling and distributing photographs 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.

Moffett Studio, Inc., and Sidney M. Barton, formerly Seymour M. Blaufarb, and each of them, in connection with the sale and distribution of miniatures or photographs in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that any miniature or photograph not actually 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 usual price at which a product is sold in the ordinary course of business is a special price or is less than the usual or customary price thereof. (Dec. 11, 1942.)

3584. Motor Lubricating Oils—Composition, Source or Origin, Quality, Used, or Reclaimed, Etc.—Free State Oil Co., a corporation, and Bernard J. Rogers, an individual trading under the name "Free State Oil Company," engaged in the sale and distribution of motor lubricating oils 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.

Free State Oil Co., a corporation, and Bernard J. Rogers, an individual, in connection with the offering for sale, sale, or distribution of said motor lubricating oils in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. The use of the hyphenated words "Pen-Pep" as part of the trade or brand name under which to sell motor lubricating oils that are not, in fact, composed of Pennsylvania oil, and from the use of the word "Pen," or any abbreviation of the word "Pennsylvania," either alone or in connection with any other word or words or in any way so as to import or imply that the product referred to is composed of Pennsylvania oil, when in fact, the product contains oil other than Pennsylvania oil.

2. The use of the phrase, "2000 Mile Oil" to represent or designate a motor lubricant which would not, in fact, efficiently lubricate a motor throughout the indicated mileage, or of any other phrase as purportedly indicative of the mileage competency of a motor lubricating oil, which is not of such durable quality and/or duty capacity as will sufficiently lubricate the motor, or its parts, that is to say, enable its continued, satisfactory use as a lubricant throughout the indicated mileage.

3. Failing to clearly and unequivocally disclose the fact that each of the aforesaid brands of lubricating oils is composed of or contains, as the case may be, used or reclaimed oil, in all invoices, and on the printed and advertising matter, sales promotional descriptions, or representations thereof, however, disseminated or published. (Dec. 11, 1942.)

3585. Medicinal Preparations—Qualities, Properties or Results, Safety, Nature, and Scientific, or Relevant Facts.—Frank E. Carter, an individual trading as Three Palms Pharmacy, engaged in the sale and distribution of medicinal preparations, including products designated Vitamalt, Natura Calcium Compound, and Vitameal, 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 as set forth therein.

Frank E. Carter, in connection with the sale and distribution in commerce, as commerce is defined by the Federal Trade Commission Act, or the advertising by the means set forth in the stipulation, of the preparations designated Vitamalt, Natura Calcium Compound, and Vitameal or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or names or any other name or names, agreed he will forthwith cease and desist from representing, directly or by implication or inference:

(a) That Vitamalt and/or Natura Calcium Compound have any reducing action, or that any weight loss resulting from or occasioned by following the directions for the use thereof is other than such as would naturally result from a starvation diet or abstinence from food.

(b) That such preparation or preparations or the diet prescribed therewith can be depended upon to effect a weight reduction of 10 pounds in 5 days; or that such diet will effectuate any weight reduction in excess of that actually resulting therefrom.

(c) That the diet prescribed with Vitamalt will not cause or result in weakness or hunger.

(d) That the use of Vitamalt and/or Natura Calcium Compound with rich food has any building tendency, or any practical significance from the standpoint of caloric intake.

(e) That said preparations, or either of them, will give new life and freshness to the skin or free the skin of pimples or blotches; will keep the glands or nerves functioning or nourished or have any beneficial effect upon the body metabolism; will "vitalize" the system; will cause the pains of rheumatism, arthritis or lumbago to disappear; are a competent treatment for nervousness, offensive breath, pimples, rheumatism, stomach trouble, or constipation; or constitute an adequate treatment for glandular or nervous upset occurring during menopause.

(f) That by the use of such preparation or preparations, as directed, one can effectuate a material weight reduction safely or without lowering resistance to disease or otherwise endangering the health; or that the use thereof improves the health.

(g) That Vitamalt is a "sustaining tonic" or a tonic.

(h) That the "Vitamalt Way" of allegedly reducing weight does not consist of fasting; that Vitamalt supplies all the needed vitamins; or that the only injurious effect of fasting results from depriving the glands and nerves of vitamins.

(i) That the specific function of vitamins is to feed the various glands of the body; that the customary diet is deficient in vitamins; or that the administration of vitamins in excess of the ordinary requirements will result in health, superior physical condition, or strength, or increased resistance.

(j) That Vitamin B deficiency usually is the cause of irritability or sleeplessness; that the use of such vitamin can be depended upon to correct irritability or sleeplessness; or that "Vitamin 'B' Complex" or vitamin B is of particular significance in connection with the building of nerve tissue.

(k) That vitamin B constitutes an adequate treatment for rheumatism or arthritic pains or for neuritis or neuritic pains other than the specific neuritis of vitamin B deficiency.

(l) That the vitamins contained in Vitamalt will insure full digestion proteins or consumption of the excess fats of the body.

(m) That vitamin A has a specific effect upon the lungs; that the ingestion of such vitamin in excess of the amounts contained in the ordinary mixed diet imparts additional resistance to infectious diseases; or that it increases appetite except in relatively rare cases where a decreased appetite may be due to a vitamin A deficiency.

(n) That vitamin B can be depended upon to protect against nerve and brain diseases.

(o) That the functions of vitamin D include the regulation of iron utilization or the enrichment of blood.

(p) That vitamin E plays any significant role in human reproduction; or that such vitamin is essential for mineral nutrition of the muscles or the promotion of vigorous mentality.

(q) That vitamin G aids digestion or has any specific effect in connection with the digestive processes, or that it invigorates or lubricates the intestinal tract.

(r) That the product designated Vitameal is a cure or competent remedy for or is capable of correcting constipation; or that it has any laxative effect whatsoever other than such temporary effect as might possibly be afforded in cases of constipation arising from failure to include sufficient roughage in the diet. (Dec. 17, 1942.)

3586. Cleaning, Dyeing, and Storing Services—Government Approval or Endorsement.—The Fenton United Cleaning and Dyeing Co., Inc., a corporation, engaged in the cleaning, dyeing, and storage business, and pursuant thereto, collects clothing and other articles from its customers in other States and transports said clothing and other articles from other States to its places of business; said corporation cleans, dyes, and stores such clothing or articles at its places of business, delivers the same from such places of business to its customers, and collects from such customers its charges for cleanings, dyeing, or storing such clothing or other articles; said corporation maintains, and at all times has maintained a course of trade in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, and entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Fenton United Cleaning and Dyeing Co., Inc., in connection with the offering for sale, sale, or solicitation of cleaning, dyeing, or storage services in commerce, as defined by said act, agreed forthwith to cease and desist from the use of the words "U. S. Approved Storage"; or from representing, directly or inferentially, that either its storage facilities or its methods of storage have received the approval,

endorsement, or recommendation of the United States Government or any agency or department thereof. (Dec. 17, 1942.)

3587. **Mattresses—Doctor's Design or Supervision and "Health."**—Gerson Bedding Co., a corporation, engaged in the business of manufacturing mattresses and studio couches and in the sale thereof, in interstate commerce, in competition with other corporations and with individuals, firms, and partnership likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Gerson Bedding Co., in connection with the offering for sale, sale, or distribution of its mattresses in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use of the word "doctor" or the abbreviation "Dr," either alone or in connection with a name, or in any way, so as to import or imply, or the effect of which tends or may tend to convey the belief or impression that said products have been made in accordance with the design or under the supervision of a medical practitioner, or that said products contain special scientific or health measures which are the result of medical determination or the services of a doctor of medicine: *Provided, however,* If the words "Dr. Coleman" are used in connection with the marking, stamping, branding, or labeling of mattresses made in accordance with the directions or under the supervision of the named person, then in that case, said words shall be immediately accompanied by some other word or words, as osteopath, osteopathic physician, or doctor of osteopathy, so as to indicate clearly and unequivocally that the named person is other than a medical practitioner.

2. The use of the word "Health" either alone or in connection with any other word or words, or in any way, as descriptive of said mattresses, the effect of which tends or may tend to cause the belief or impression that said products have therapeutic properties which would be of value in connection with the cure or prevention of disease or that such mattresses are of such nature as would guarantee or assure health to or the maintenance of health by the users thereof. (Dec. 18, 1942.)

3588. **Cooking Ware and Kitchen Equipment—Comparative Merits, Competitive Products, Scientific or Relevant Facts, Special Price, Dietitian, Etc.**—Advance Aluminum Castings Corp., a corporation, engaged in the manufacture of cook ware made from an aluminum alloy called Advaloy, such cook ware consisting of a pressure cooker known as

Minitmaid and a full line of kitchen equipment, as sauce pans, fry pans, roasters, and the like, known as Miracle Maid and designed for use in the so-called waterless method of cooking; said corporation has sold and now sells said cook ware, under the trade name of one of its divisions, namely, "The Society For Correct Food Preparation," 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.

Advance Aluminum Castings Corp., in connection with the offering for sale, sale, or distribution of its merchandise, in commerce, as commerce is defined by the Federal Trade Commission Act, the said corporation, its officers, agents, salesmen, and representatives, will cease and desist forthwith from the use in its literature and sales-promotional matter of whatever kind or description, or in any other way, of any statement or representation, pictorial or otherwise, the effect of which tends or may tend to convey the belief or impression to prospective purchasers.

1. That the use of the pot and pan or ordinary method of cooking or preparing foods by boiling result in the user suffering from malnourishment or undernourishment, or that the use of such cooking equipment will cause ailments such as scurvy, rickets, poor teeth, anemia, enlarged lymph glands, bone and joint diseases, skin diseases, or predisposition to tuberculosis, or that any of such ailments is due to improper food habits, or that the use of the Minitmaid or Miracle Maid Cookware will prevent such ailments, or any thereof.

2. That the loss of food values, minerals, and vitamins, allegedly resulting from the use of the ordinary or so-called old-fashioned methods of cooking foods, is in excess of what is actually the fact.

3. That a test, featured in said literature and sales-promotional matter as having been conducted under the auspices of the University of Wisconsin, establishes the fact that certain mineral losses of designated amounts will result from the cooking of foods by boiling, without clearly and unequivocally disclosing the fact that the foods involved in the test were prepared by boiling them in twice as much water as needed to cover the foods, and that by boiling them with merely enough water to cover the foods, and draining as soon as done, considerably less loss of minerals would result.

4. That the loss of food values, minerals, or vitamins, through the use of the ordinary methods of cooking by boiling would be, in all cases, appreciably, if any, greater than would be the case if the cooking is done through the use of the so-called waterless method of cooking.

5. That the time required to cook foods in the Miracle Maid utensils is appreciably less than that required when so-called ordinary utensils are used.

6. That there is any scientific basis for the claim that the alleged increase in life span of from 33 years in 1800 to 58 years at the present time is due to improved methods of cooking, or that it is known to what extent better methods of food preparation have contributed to the increase in life span.

7. That canned goods have been robbed of the essential food elements.

8. That there is likelihood of monoxide gas forming in the ordinary baking oven in such quantity as would affect foods cooked therein with resultant harm or injury to the eater of said foods.

9. That there is substantiation for the statement that 50,000 individuals are sent to insane asylums yearly because of their inability to capture the right amount of structural values from foods.

10. That there is fear of injury to health from the use of the average cooking utensils found in American homes.

11. That there is likelihood of the average enamel utensil chipping off and causing injury to the user.

12. That the Minitmaid and Miracle Maid equipment can be purchased at a so-called "first-call" or "coupon" price, that is to say, at a lower price than the price at which said equipment is customarily sold at retail, when in fact, such coupon price actually is the price at which said equipment is regularly sold in the usual course of business.

13. That the author of the book entitled "The Business of Living" is one of the greatest dietitians and nutritionists in the United States, when in fact, his reputation in the indicated field of science is not such as to warrant such representation. (Dec. 21, 1942.)

3589. Pillows—Composition.—Premier Pillow Corporation, a corporation, engaged in the business of manufacturing pillows 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.

Premier Pillow Corporation, in connection with the offering for sale, sale, or distribution of its pillows or related products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the term "100% White Goose Down" as descriptive of the filling of said products which 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 the belief or impression that the said products are filled entirely with down, or that they do not contain any material or substances other than down. (Dec. 21, 1942.)

3590. Correspondence Courses—"Institute."—James J. Craig, an individual, trading under the name and style of The Craig Institute, engaged in the selling of courses of instruction by mail in preparation for field service examinations and positions, in interstate commerce, 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.

James J. Craig, in connection with the offering for sale or sale of his correspondence courses in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "Institute," as part of the trade name under which he carries on his business; and from the use of the said word either alone or in connection with any other word or words, or in any way, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that the business conducted by the said individual is that of an organization for the promotion of learning, philosophy, the arts or sciences. (Dec. 23, 1942.)

3591. Intercommunicative Systems—Free Products, History, Opportunities, Earnings, or Profits, Etc.—Inter-Communication System of America, Inc., a corporation, and Milton Meyer and Joseph Meyer, copartners trading as Monarch Products Co., engaged in the sale and distribution in interstate commerce of intercommunicative systems designated "Flash-A-Call," in competition with other corporations and partnerships and with firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Inter-Communication System of America, Inc., Milton Meyer and Joseph Meyer, and each of them agreed, that in connection with the sale and distribution of their intercommunicative systems in commerce, as commerce is defined by the Federal Trade Commission Act, they will forthwith cease and desist from:

(a) The use of the word "Free" or other term or expression of like meaning to describe or refer to products, when such products are not given as 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.

(b) Representing by the use of the words "New Invention," "Utterly new product," or other word or words of like meaning that such

products are representative of some new invention or are innovations that have not heretofore been used.

(c) Representing, directly or inferentially, that said products are noncompetitive or that no competition will be encountered in the sale thereof; that no selling effort is required in order to effect sales thereof; that 99 out of 100 persons contacted or any specified number of persons can be depended upon to purchase such products; or that exclusive sales territory is allotted to agents or sales representatives.

(d) Representing by means of statements such as "Men earning high as \$150 week. No experience necessary." or in any manner, that sales representatives generally, engaged in the sale of such products, thereby earn \$150 per week or any amount in excess of their actual earnings.

(e) Representing as earnings or profits which may be made during any specified period of time from the sale of such products any amounts in excess of the usual and customary amounts which actually have been earned by sales representatives generally, under usual and normal conditions in due course of business.

(f) The use of the words "Absolutely Confidential," "Confidential," or other word or words of like meaning as descriptive of conversations over or by means of devices operating under the so-called loud speaker principle.

(g) Representing that an average of three additional substations are sold with every complete "Flash-A-Call" outfit or that any number of substations in excess of the true number actually sold have been sold for each complete outfit sold. (Dec. 24, 1942.)

3592. **Women's Hats—Composition and Old as New.**—Variety Hat Co., Inc., a corporation, engaged in the manufacture of hats for women 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.

Variety Hat Co., Inc., in connection with the offering for sale, sale, or distribution of its hats in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from:

1. Representing that hats, made in whole or in part from used or second-hand materials, or manufacturers' seconds or imperfects, 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, used, or

manufacturers' seconds, as the case may be, provided that if sweat bands are not affixed to such hats, then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies;

2. Representing in any manner that hats made in whole or in part from old, used, or second-hand materials or from manufacturers' seconds or imperfects are new or are composed of new materials.

It is further understood that no provision contained in this agreement, so far as the same refers to wool products, shall be construed as authorizing or promoting 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. (Dec. 24, 1942.)

3593. **Cosmetic Preparation—Qualities, Properties, or Results.**—Amorskin Corporation, engaged in the sale and distribution in interstate commerce of a cosmetic preparation designated "Amor Skin" for use on the skin, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Amorskin Corporation, 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 above set forth, of the cosmetic preparation designated "Amor Skin" 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 it will forthwith cease and desist from representing that said preparation will feed or nourish the skin or that its use will improve the structure or tissue of the skin or have any effect upon the contour of the elbows. (Dec. 28, 1942.)

3594. **Used Clothing—Old as New, Etc.**—David Feinmel, an individual trading as Brighton Sales, engaged in the sale and distribution of old, worn, second-hand, or previously used clothing in interstate commerce, in competition with other individuals, and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

David Feinmel, in connection with the sale and distribution of his old, worn, second-hand, or previously used clothing in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will forthwith cease and desist from:

(a) The use of the words "slightly used" or the word "slightly" or other word or words of like meaning in any manner the effect of which tends or may tend to convey the belief or impression that the previous use or wear of such products is slight or negligible when,

in fact, the extent, degree, or nature of such use or wear is such as to be improperly designated or referred to as "slightly" or "slight."

(b) Offering for sale or selling any old, worn, second-hand, or previously used article of clothing unless there be attached to the exposed surface thereof a tag or label bearing in conspicuous and legible terms a statement that such garment is old, worn, second-hand, or previously used.

(c) The use of any fiber designation in connection with the offering for sale, sale, distribution, labeling, or advertising of any merchandise unless such designation truthfully discloses each constituent fiber thereof in the order of predominance by weight, beginning with the largest single constituent, and also unless tags or labels bearing in conspicuous and legible terms such correct fiber content designation be affixed to the exposed surface of the article offered for sale or sold.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said David Feinmel in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (Dec. 28, 1942.)

3595. Sales Promotion Booklets and Stamps—Lottery Scheme.—Chicago Premium Co., Inc., a corporation, engaged in the sale and distribution of so-called eyeleted gold seal booklets and trading stamps in interstate commerce, that is to say, caused said products, when sold, to be shipped from its place of business to retail dealers located in other States and there engaged in the sale of petroleum products and/or other merchandise in connection with the employment and use by the said dealers of the aforesaid booklets and stamps as advertising media; said corporation, engaged 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.

Chicago Premium Co., Inc., in connection with the conduct of its business, involving the sale and distribution of merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from 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 obviously are intended for use, in the sale or distribution of merchandise of whatever kind or description to the public by means of a game of chance, gift enterprise, or lottery scheme. (Dec. 28, 1942.)

3608.¹ **Veterinary Biological and Pharmaceutical Products—Success, Use, or Standing.**—Allied Laboratories, Inc., also trading as Pitman-Moore Co., engaged in the sale and distribution of veterinary biological and pharmaceutical 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 as set forth therein.

Allied Laboratories, Inc., in connection with the sale and distribution of veterinary biological and pharmaceutical products in commerce, as commerce is defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner set forth in the stipulation, agreed it will forthwith cease and desist from the use of the name of any disease or condition in the designation of any of its biological products or from representing in any other manner, directly or inferentially, that said product is a recognized medicament for use in the treatment of any disease or condition, unless it be satisfactorily established by competent scientific authorities that such product is, in fact, a recognized medicament for use in the treatment of such disease or condition. (Dec. 18, 1942.)

¹ Rescinded subsequent to the period covered by this volume.

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

01778.² Laxative—Comparative Merits, Qualities, Properties or Results, and Safety.—Union Pharmaceutical Co., Inc., a corporation, 12 Roosevelt Avenue, Bloomfield, N. J., vendor-advertiser, was engaged in selling a bulk type laxative preparation designated Saraka and agreed, in connection with the dissemination of future advertising, to cease and desist:

(a) From representing, directly or by implication, that Agar used in Agar laxatives is capable of promoting germ growth; or

(b) From representing, directly or by implication, that Saraka exercises or tones up the system, or exercises or strengthens the intestinal muscles, or is essential for normal digestion; or

(c) From using any advertisement which fails to reveal that Saraka 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 Union Pharmaceutical Co., Inc.; agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing statement. (Dec. 18, 1942.)

02387.² Disinfectant bactericides—Qualities, Properties or Results, and Endorsement or Approval.—General Laboratories, Division of Pennsylvania Salt Manufacturing Co., a corporation, 100 Widener Building, Philadelphia, Pa., vendor-advertiser, was engaged in selling certain disinfectant bactericides designated "B-K Powder" and "B-K Liquid," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That B-K Powder will prevent, control, or cure colds, roup, bronchitis, or other respiratory diseases in poultry.

(b) That B K Powder has been approved by public health authorities.

¹ The stipulations in question are those of the radio and periodical division with vendor-advertisers. Period covered is that of this volume, namely, July 1, 1942, to December 31, 1942, inclusive. For digests of previous stipulations, see vols. 14 to 34 of Commission's decisions.

² Supplemental.

The said General Laboratories further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 2, 1942.)

02675.* Rat Poison—Qualities, Properties or Results, and Safety.—Burgess Seed & Plant Co., a corporation, trading as V. & M. Products Co., Galesburg, Mich., vendor-advertiser, was engaged in selling a rat poison designated Black Cat and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Black Cat will kill gophers or that it is an effective poison for mice.

(b) That Black Cat drives rats that are induced to take it outdoors to die.

(c) That this product is completely safe or harmless to humans, domestic animals, baby chickens, poultry, dogs, or cats.

The said Burgess Seed & Plant Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 9, 1942.)

02692.³ Rat Poisons—Safety, Qualities, Properties, or Results, and Comparative Merits.—The Cenol Co., Inc., a corporation, 4250 North Crawford Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling rat-killing preparations designated Cenol Squill Powder, Cenol Rat Destroyer, and Cenol Rat Cakes and agreed, in connection with the dissemination of future advertising, to cease and desist from representing, directly or by implication:

(a) That its products are completely safe or without danger to human beings, domestic animals, or fowls.

(b) That its products are effective poisons for mice.

(c) That these products will exterminate rats.

(d) That Cenol Squill Powder is the leading raticide in the United States, or that it is superior to, or more effective than, similar preparations containing the same amount and toxic quality of Red Squill Powder.

(e) That Cenol Rat Destroyer will drive poisoned rats out of doors to die in the open.

The said Cenol Co., Inc., agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (July 9, 1942.)

03020. Medicinal Preparation—Laboratories, Qualities, Properties or Results, Guaranteed and Safety.—Frank Hill, an individual, doing business under the trade name of Hill Laboratories, 115 Blossom Street, Carterville, Ill., vendor-advertiser, was engaged in selling a medicinal preparation for hemorrhoids or piles designated Hemorointment and agreed, in connection with the dissemination of future advertising, to cease and desist from:

(a) Using the word "laboratories" as any part of his trade name or from otherwise representing that he owns, operates, or controls a laboratory or laboratories.

* Substitute.

(b) Representing that Hemorointment is a remedy for the healing, cure, or reduction of hemorrhoids or piles.

(c) Representing that Hemorointment will afford relief for hemorrhoids or piles unless limited to relief of the pain and simple discomfort of external hemorrhoids or piles.

(d) Representing that Hemorointment is guaranteed unless the terms and conditions of such guarantee are fully set forth in such advertisement.

(e) Representing that Hemorointment contains no harmful ingredients.

The said Frank Hill further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 1, 1942.)

03021. Rat Poison—Qualities, Properties or Results, and Safety.—Queen Ant Control, Inc., a corporation, Columbus, Ohio, vendor-advertiser, was engaged in selling a rat poison designated Q. A. Ratabs 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 Q. A. Ratabs will remove all rats or will prevent reinfestation of premises.

(b) That every rat will eat Q. A. Ratabs.

(c) That rats eating this poison go outside to die.

(d) That this product is completely safe or harmless to children, pets, livestock, or poultry.

(e) That this product is an effective poison for mice.

The said Queen Ant Control, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 6, 1942.)

03022. Livestock and Poultry Feeds—Qualities, Properties or Results, and Comparative Merits.—Houston Milling Co., Inc., a corporation, Houston, Tex., vendor-advertiser, was engaged in selling livestock and poultry feeds designated American Maid Arrow Feeds 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 Arrow Turkey Growing Mash or Arrow Sure Shot Growing Mash will result in more eggs or profit without limiting such basis of comparison to natural as distinguished from other prepared feeds.

2. That the addition of Cereal Grass to Arrow Feeds gives results that are not possible with many feeds containing no Cereal Grass; or that the inclusion of Cereal Grass in Arrow Feeds results in lower mortality, increased hatchability, higher egg production, larger eggs, builds greater vitamin reserve in hens, results in strong, highly pigmented chicks, or keeps birds strong with excellent feather bloom and luster and able to stand the strain of heavy egg production.

3. That the use of Arrow Horse and Mule Feed results in more work at lower feeding cost.

4. That Arrow Mineral Mixture alone can maintain rugged health or promote steady growth and development.

The said Houston Milling Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 6, 1942.)

03023. **Rat Poisons—Government Indorsement, Qualities, Properties or Results, and Safety.**—Robert H. Harkins, an individual doing business as Nott Manufacturing Co., 87 Frankfort Street, New York City, vendor-advertiser, was engaged in selling rat poisons designated Rat-Not and Rat-Nots and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That either of these products is recommended by the United States Department of Agriculture.

(b) That Rat-Not or Rat-Nots will drive outdoors to die those rats which are induced to take them.

(c) That either of these products assures the complete extermination of rats.

(d) That either of these products is harmless to humans, dogs, cats, or livestock.

The said Robert H. Harkins further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 9, 1942.)

03024. **Washing Machines—Safety, Quality, Competitive Products, and Success.**—The Maytag Co., a corporation, Newton, Iowa, vendor-advertiser, was engaged in selling Maytag Washing Machines and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. Through the use of the words "entirely safe" or the word "safe," or words of the same or similar meaning, that there is no possibility of injury from the use of the wringer on the Maytag.

2. By the use of the expression "standard of the world for washer value," or otherwise, that the Maytag has been designated as a world standard for washer value by a person, group, or organization with authority to set such standard.

3. That the wringers on most competing washing machines have sharp, protruding corners.

4. That there are 4,000,000 owners of Maytag washing machines.

The said The Maytag Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 9, 1942.)

03025. **Fountain Pens—Maker, Manufacturer, Introductory Price, Special Offer, Guarantee, and Army or Navy Conformance.**—William L. Martin, an individual, trading as Waterbury Pen Co., and Radio Advertising Services, 706 Insurance Center, Chicago, Ill., advertiser-vendor, was engaged in selling Waterbury Fountain Pens and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Using the word or name "Waterbury" in connection with or as part of his trade name or as a brand or label for his fountain pens.

(b) Representing that his pens are manufactured by a nationally known manufacturer.

(c) Representing that he manufactures such fountain pens or that he actually owns and operates or directly and absolutely controls a factory or plant in which the same are manufactured or produced.

(d) Representing that his fountain pens are offered for sale to the purchasing public at a lower price than such fountain pens are customarily sold and at an introductory price or as a special offer, when the indicated price is the usual and regular price at which said fountain pens are customarily sold in the regular course of business.

(e) Designating any representation or agreement as a guarantee, guaranty, or warranty which involves a service charge or calls for the payment of additional money by the purchasers of his fountain pens.

(f) Representing that his fountain pens conform to Army or Navy regulations.

That said William L. Martin agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 17, 1942.)

03026. Medicinal Ointment—Qualities, Properties, or Results, and Composition.—John A. Muise and Arthur S. Ryan, copartners doing business under the trade name of Sun-Ra Co., Box 266, Gloucester, Mass., vendor-advertisers, were engaged in selling Sun-Ra Vitamin Ointment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the said preparation is a remedy, treatment, or cure for eczema.

(b) That the said preparation has any therapeutic value in the treatment of psoriasis, insect bites, abrasions, or skin irritations in excess of having a limited value in the treatment of bites of nonvenomous insects and in the relief of minor abrasions and skin irritations.

(c) That the said preparation is healing.

(d) That the said preparation contains boric acid.

(e) That the said preparation has any therapeutic value for all skin diseases.

(f) That the said preparation does not contain harmful ingredients.

The said John A. Muise and Arthur S. Ryan further agreed to cease and desist from the use of the word "vitamin" as a part of the brand name for this product or from otherwise representing that it possesses any merit by reason of any vitamins therein contained.

The said John A. Muise and Arthur S. Ryan agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (July 17, 1942.)

03027. Medicinal Preparations—Qualities, Properties or Results, and Safety.—Harry C. House, an individual, trading as Western Natural Foods Co., 1518 Second Avenue, Seattle, Wash., vendor-advertiser, was engaged in selling medicinal preparations designated Kema Tablets and Kema Tea and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That the product Kema Tablets and the product Kema Tea, or either of them, is of value in bringing about weight reduction.

2. That the product Kema Tablets and the product Kema Tea, or either of them, is of value as an accessory or supplemental food or dietary aid or has any significant food value.

3. That the product Kema Tablets or the product Kema Tea, or either of them, supplies mineral colloids essential to hydrolysis, saponification, oxidation, or elimination of fat.

4. That the product Kema Tea is of value in keeping organs of elimination in proper working order.

5. That the product Kema Tablets or the product Kema Tea is harmless.

It is hereby further agreed by Harry C. House that, in soliciting the sale of the product Kema Tablets and the product Kema Tea, or either of them, or any other preparations of substantially the same composition or possessing substantially the same properties, whether sold under those names or any other names, he will forthwith cease and desist from disseminating, by the means and in the manner above set out, any advertisement which fails to reveal: (a) That said preparations should not be used when abdominal pain (stomachache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present; and (b) that frequent or continued use of said preparations may result in dependence on laxatives; *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 Harry C. House further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 22, 1942.)

03028. Permanent Wave Hair Solution—History, Qualities, Properties or Results, Competitive Products, Special or Limited Offers, and Composition.—B. E. Sanders, Inc., a corporation, Tulsa, Okla., vendor-advertiser, was engaged in selling a permanent wave solution designated Floating Oil-of-Castor and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That this preparation—

1. Is a new type of permanent wave solution.

2. Will nourish the hair.

3. Contains less ammonia than is contained in other permanent wave solutions; and

(b) That said preparation is sold by means of a special, introductory, or limited offer.

The said B. E. Sanders, Inc., further agreed that in the dissemination of advertising by the means and in the manner above set out it will cease and desist from representing by the use of the words Floating Oil-of-Castor in the designation of its product, or other-

wise, that the oil ingredient of said preparation is composed principally of castor oil.

The said B. E. Sanders, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 22, 1942.)

03029. Farming Implement—Qualities, Properties or Results, and Comparative Merits.—Charles Anderson, Arthur Anderson, George Anderson, Edna Anderson, Paul Anderson, Anne Anderson, Alice Anderson, Vern Anderson, Clarence Anderson, Vance Anderson, Lily Belle Anderson, and Edsel Glass and Carrie Glass, copartners trading as Western Land Roller Co., Hastings, Nebr., vendor-advertisers, were engaged in selling a farming implement designated as the "Western Pulverizer, Packer, and Mulcher," also designated at various times in the advertising as the "New Western," "Western," and "Western Land Roller" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That use of said machine in preparing a seed bed will save one-third, one-half, or more of the seed ordinarily used when planting alfalfa, winter wheat, barley, and oats over other methods of properly preparing seed beds for such crops.

(b) That when said machine is used for preparing a seed bed every seed will germinate and make a healthy, strong growth, or that a good stand may be obtained every year.

(c) That it will be effective in causing potato crops to mature eight to ten days earlier, be a better stand, or have a larger yield than a potato crop planted in a seed bed properly prepared by other implements and methods.

(d) That use of said machine will increase profits of sugar and wheat growers from 25 to 50 percent or effect any other definitely stated increased percentage of profit.

(e) That it will prevent or protect against crop failures except insofar as and to the extent that crop failures may be caused by or be attributable to loose, unpacked soil.

(f) That use of said machine will increase the yield of corn from 20 to 40 bushels per acre or effect any definitely stated increased yield per acre over such field as may be obtained by generally recognized and accepted good farming practices.

(g) That use of said machine will enable one to produce alfalfa of such growth and vigor as would enable it to withstand almost any sort of unfavorable conditions.

(h) That it will increase the yield of oats 10 bushels per acre or effect any definitely stated increased yield per acre over such yields as may be obtained by generally recognized and accepted good-farming practices.

(i) That it will prevent soil blowing except insofar as blowing of the soil may in some instances be caused by or be attributable to loose, unpacked soil.

(j) That it will prevent winter killing of wheat except in those instances where winter killing may result from loose, unpacked, cracked, or heaved soil.

(k) That it will double crop yields or have any effect with respect thereto except insofar as a loose or unpacked seed bed may result in decreased crop yields.

The said individuals, hereinbefore named, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 24, 1942.)

03030. Medicinal Preparation—Qualities, Properties or Results, and Safety.—Alpinol Corp., a corporation, 565 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a preparation designated Girolamo Pagliano Syrup and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said preparation:

- (a) Has a purifying effect on the blood or on the humors of the body.
- (b) Eliminates noxious substances from the organisms.
- (c) Is a remedy or cure for any disease.
- (d) Has any therapeutic value except as a cathartic.

The said Alpinol Corp., further agreed that in the dissemination of advertising by the means and in the manner above set forth it will forthwith cease and desist from disseminating or causing to be disseminated any advertising which fails clearly to reveal the material fact that said preparation should not be used when abdominal pain (stomach ache, cramps, colic) nausea, vomiting (stomach sickness) or other symptoms of appendicitis are present, and that its frequent or continued use may result in a 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, are on both label and labeling, contains a caution or warning to the same effect.

The said Alpinol Corp. further agreed not to publish or cause to be published any representation contrary to the foregoing agreement. (July 24, 1942.)

03031. Medicinal Preparation—Qualities, Properties, or Results.—The Reese Chemical Co., a corporation, 10617 Frank Avenue, Cleveland, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Red Hearts and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said product will restore youthful vigor or sex vitality, or will act as an aphrodisiac or as a stimulant.

The said The Reese Chemical Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 28, 1942.)

03032. Medicinal Preparation—Qualities, Properties or Results, and Safety.—Edmond W. Caforio, an individual doing business as Hempstead Selipon Co., P. O. Box 141, Hempstead, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation containing potassium bitartrate, sulphur, and emodin, designated "Elip" and

agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the product is a remedy for or that it will cure hemorrhoids or cause that condition to dry up.
- (b) That the product will cause the suffering resulting from hemorrhoids to cease.
- (c) That the product is safe.
- (d) That the product will relieve itching, inflammation, or bleeding caused by hemorrhoids.

The said Edmond W. Caforio further agreed that in the dissemination of advertising by the means and in the manner above set out, of a medicinal preparation now designated Elip, 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, he will forthwith cease and desist from disseminating any advertisements which fail to reveal that the product should not be used when abdominal pain (stomach ache, cramps, colic), nausea, vomiting (stomach sickness) or other symptoms of appendicitis are present: *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 Edmond W. Caforio further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 28, 1942.)

03033. Medicinal Preparation—Composition, Qualities, Properties or Results, Earnings or Profits, and Nature.—Irving Z. Harris and Pauline B. Harris, copartners doing business under the trade names of Veltex Co. and the Vi-Co Sales Co., 1811 First Ave., North Birmingham, Ala., vendor-advertisers, were engaged in selling a medicinal preparation designated Vi-Co Compound and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That said preparation is a vegetable and mineral compound.
- (b) That said preparation will afford relief for indigestion or sour stomach.
- (c) That they guarantee any specific profit on any specific investment of money made by purchasers of said preparation.
- (d) 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 heretofore been consistently made in like periods of time by their active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

It is hereby further agreed by Irving Z. Harris and Pauline B. Harris, that in the dissemination of advertising, by the means and

in the manner above set out, of a medicinal preparation now designated Vi-Co Compound 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 the use of the word "tonic," either alone or in connection with any other word or words to describe or designate the aforesaid medicinal preparation.

Irving Z. Harris and Pauline B. Harris 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 demonstration, solicitation 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 Irving Z. Harris and Pauline B. Harris further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (July 29, 1942.)

03034. **Dry Dog Food Preparations—Composition.**—The Thorobread Co., Inc., a corporation, 1125-35 West Sixth St., Cincinnati, Ohio, vendor-advertiser, engaged in selling certain dry dog food preparations designated "Thorobread T Squares (biscuits)," and "Thorobread Kibbled," "Thorobread Fine Kibbled (meal)," and "Thorobread Meat Cereal Dog Feed"; and The Keelor & Stites Co., a corporation, 3001 Carew Tower, Cincinnati, Ohio, advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of The Thorobread Co., Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from using the terms "meat," "dehydrated meat," or "meat cereal," 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 Thorobread Co., Inc. and The Keelor & Stites 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. (July 29, 1942.)

03035. **Hand Lotion—Comparative Merits and Competitive Products.**—Chamberlain Sales Corp., a corporation, and L. H. Chamberlain, an individual, Des Moines, Iowa, vendor-advertisers, were engaged in selling a hand lotion designated Chamberlain's Lotion and agreed in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any test made to show that Chamberlain's Lotion flows more readily than other lotions indicates that Chamberlain's Lotion is superior to other lotions.

(b) That other lotions containing tragacanth gum or filler are sticky and messy.

The said Chamberlain Sales Corp. and L. H. Chamberlain further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing. (Aug. 3, 1942.)

03036. Hair Preparations—Qualities, Properties, or Results.—Mack Jenious and Gensie Jenious, copartners doing business as Makasar Beauty Products Co. and as Mme. Gensie Jenious & Co., 178-180 Bloomfield Avenue, Montclair, N. J., vendor-advertisers, were engaged in selling hair preparations designated "Makasar Wonderful Pomade" and "Makasar Wonderful Pomade Double Strength" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that Makasar Wonderful Pomade or Makasar Wonderful Pomade Double Strength have any therapeutic value in the treatment of conditions which cause falling hair.

The said Mack Jenious and Gensie Jenious further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 3, 1942.)

03037. Camera—Qualities, Properties, or Results.—Louis Mandel, doing business as PDQ Camera Co., 109 East Thirty-fifth St., Chicago, Ill., vendor-advertiser, was engaged in selling a camera designated PDQ Camera and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That said camera is automatic; or
2. That Gold-Tone Sepia photos can be made with said camera; or
3. That said camera can be successfully used in photographing drivers' or chauffeurs' licenses.

The said Louis Mandel agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 4, 1942.)

03038. Livestock and Poultry Feeds—Economy, Quality, Properties or Results, and Comparative Merits.—Tex-O-Kan Flour Mills, a corporation, doing business under the trade name of Burrus Feed Mills, 2701 Alamo St., Dallas, Tex., vendor-advertiser, engaged in selling livestock and poultry feeds designated "Texo Poultry Fatner," "Texo Laying Mash," "Texo Calf Meal," "Texo Horse and Mule Feed," "Texo Protein Supplement," "Texo 24% Protein Dairy Feed," "Texo All Mash Chick Starter," and "Texo Broiler Mash;" and Rowland Broiles, an individual, doing business under the trade name of Rowland Broiles Co., 616 Dan Waggoner Building, Fort Worth, Tex., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf

of Burrus Feed Mills agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any of said Texo Feeds bring greater profits at lower feeding costs, assure success or profits, or is the most economical feed one can buy.

(b) That Texo Poultry Fatner produces most pounds or the fastest gains at lowest costs.

(c) That Texo Laying Mash gives assurances of most eggs at the lowest feeding costs.

(d) That Texo Calf Meal keeps calves in the best condition from birth to weaning time, or assures the building of calves into healthy herd cows.

(e) That Texo Horse and Mule Feed maintains horses or mules in a sleek or healthy condition, or that 100 pounds of said feed will go farther than 5 bushels of oats or three bushels of corn, or has more variety or feed value than other field-run grains; or is the most economical feed one can buy for horses or mules.

(f) That Texo 24 Percent Protein Dairy Feed satisfies the demand for peak milk production the year round, or keeps production high at low-feed costs.

(g) That Texo All Mash Starter produces better feathered or healthier chicks at maturity at lower feed costs, without limiting such basis of comparison to natural as distinguished from other prepared feeds.

(h) That Texo All Mash Starter prevents slipped tendons or controls coccidiosis.

(i) That Texo Broiler Mash makes choice, white, juicy, or fine-flavored meat.

The said Tex-O-Kan Flour Mills and Rowland Broiles further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Aug. 4, 1942.)

03040.¹ Vaseline Hair Tonic—Qualities, Properties, or Results.—Chesebrough Manufacturing Co., Consolidated, a corporation, 17 State Street, New York, N. Y., vendor-advertiser, engaged in selling a cosmetic designated as Vaseline Hair Tonic; and McCann-Erickson, Inc., a corporation, 50 Rockefeller Plaza, 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 Chesebrough Manufacturing Co., Consolidated, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Vaseline Hair Tonic prevents or tends to prevent the recurrence of dandruff scales.

(b) That Vaseline Hair Tonic affects the cause of dry scalp or goes to the root of dry scalp trouble.

The said Chesebrough Manufacturing Co., Consolidated, and McCann-Erickson, 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. (Aug. 13, 1942.)

¹ 03039 not released. 03040 Supplemental.

03041. **Medicinal Preparation—Safety.**—Bernard Singerman, an individual, trading at Pixacol Co., P. O. Box 3583, Cleveland, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated pixacol and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the product constitutes a cure for psoriasis.

It is also hereby agreed by the said Bernard Singerman that in the dissemination of advertising, by the means and in the manner above set out, of a medicinal preparation now designated pixacol, 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, he will forthwith cease and desist from disseminating any advertisements which fail to reveal that the preparation may irritate the skin, particularly if applied with rubbing; that one should avoid getting it into the eyes or on mucous membranes and that it should in no case be applied to large areas of the body: *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 Bernard Singerman further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Aug. 13, 1942.)

03042. **Rat Poison—Safety and Qualities, Properties, or Results.**—Frank Spors and Esther Spors, copartners doing business under the trade name of Spors Co., Le Center, Minn., vendor-advertiser, was engaged in selling rat poison designated Rat-Rid and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

(a) That this product is completely safe or nonpoisonous to children, pets, livestock, or poultry.

(b) That rats eating this product leave the premises to die, or that they require no handling or leave no odor.

(c) That this product is an effective poison for mice.

Frank Spors and Esther Spors further agreed to cease and desist from the use of the designation "Rat-Rid" in the name for this product, or from otherwise representing that its use will rid premises of rats or clear the house of rats.

The said Frank Spors and Esther Spors further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 14, 1942.)

03043. **Medicinal Preparations—Qualities, Properties or Results, and Safety.**—Anton Sebek and Oldrich Sebek, copartners operating under

the firm name of S. C. S. Chemical Co., 2617 South Crawford Avenue, Chicago, Ill., vendor-advertisers, were engaged in selling medicinal preparations designated S. C. S. Corn Salve and S. C. S. Athlete's Foot Salve and agreed, in connection with the dissemination of future advertising, to cease and desist from representing, directly or by implication:

(a) That S. C. S. Corn Salve is a remedy or a cure for corns or that it will enable one to get rid of them.

(b) That S. C. S. Corn Salve is a remedy or a cure for callouses or warts.

(c) That S. C. S. Athlete's Foot Salve will cure athlete's foot or ringworm or that it is effective in the treatment of those conditions unless limited to such cases as are not deep-seated.

(d) That S. C. S. Athlete's Foot Salve is effective in the treatment of eczema.

It is also hereby agreed by the said Anton Sebek and Oldrich Sebek that in connection with the dissemination of advertising by the means and in the manner above set out of the medicinal preparation now designated S. C. S. Athlete's Foot Salve, 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, they will forthwith cease and desist from disseminating any advertisements which fail to reveal that the said preparation should not be applied to extensive areas of the body; that it should not be used continuously for an extended period of time; and that its use should be discontinued if a skin irritation appears: *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 also hereby further agreed by Anton Sebek and Oldrich Sebek that in the dissemination of advertising by the means and in the manner above set out of the medicinal preparation now designated S. C. S. Corn Salve, 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, they will forthwith cease and desist from disseminating any advertisements which fail to reveal that the said preparation should not be applied to sores, ulcerations, open wounds, or to any area of the body other than that under treatment: *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 Anton Sebek and Oldrich Sebek further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Aug. 14, 1942.)

03044. Candy—Comparative Merits, Qualities, Properties or Results, and Composition.—Price Candy Co., a corporation, 2 West 39th Street, Kansas City, Mo., vendor-advertiser, was engaged in selling candy designated Health Candy and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That this product is less fattening than ordinary candies.
- (b) That this product will not cause fat to be stored in the body.
- (c) That its sweetening ingredient is composed entirely of dextrose.

The said Price Candy Co. further agreed to cease and desist from representing by the use of the word "Health" in the designation of its product, or otherwise, that the said product will have a significant effect upon the health of the user thereof.

The said Price Candy Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 14, 1942.)

03045. Dog Food Preparations—Composition.—Perfection Foods Co., a corporation, trading as Standard Kennel Food Co., Battle Creek, Mich., vendor-advertiser, engaged in selling certain dry dog-food preparations designated "Standard Kibble Biscuits," "Standard Whole Biscuit," "Standard Puppy Meal," "Standard Dog Food," and "Standard Cubes"; and A. F. Dando, an individual, trading as Strand Agency, P. O. Box 804, Battle Creek, Mich., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of Standard Kennel Food Co., agreed, in connection with the dissemination of future advertising, to cease and desist from using the terms "meat" or "meat cereal," 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.

Perfection Foods Co. and A. F. Dando, and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Aug. 17, 1942.)

03046. Medicinal Preparation—Qualities, Properties or Results, Unique and Safety.—The T-Lax Products Co., a corporation, P. O. Box 1292, Birmingham, Ala., vendor-advertiser, was engaged in selling a drug designated T-Lax and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That T-Lax can be relied upon to attain or maintain good health.
- (b) That T-Lax is effective in the treatment of stomach, liver, or kidney troubles or of indigestion, biliousness, heartburn, sour stomach, nausea, gas on the stomach, bloating, or belching.

- (c) That T-Lax aids digestion.
- (d) That T-Lax will act as a laxative to or have any effect on the liver.
- (e) That T-Lax acts as a diuretic or aid to the kidneys.
- (f) That T-Lax will remove the poisonous accumulation from the blood stream.
- (g) That T-Lax is different from all other products offered for the same purpose.

The said The T-Lax Products Co. further agreed that in the dissemination of advertising by the means and in the manner above set out, of the medicinal preparation now designated T-Lax, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under this name or any other name, it 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 products should not be used when abdominal pains (stomach-ache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present, and that the frequent or continued use thereof may result in dependency 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 warning statement to the same effect.

The said The T-Lax Products Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Aug. 17, 1942.)

03047. Radio Transmittal Facilities and Power—Success, Use or Standing, and Qualities, Properties, or Results.—Liberty Broadcasting Corp., a corporation, operating Radio Station WAGA, 56 Marietta Street NW., Atlanta, Ga., vendor-advertiser, was engaged in selling the use of its radio transmittal facilities and power and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Radio Station WAGA has more listeners in Atlanta than any other radio station.
- (b) That Radio Station WAGA can, when operating as authorized in its construction permit, be heard without interference over the entire State of Georgia.

Liberty Broadcasting Corp. further agreed to cease and desist from misrepresenting through exaggeration the number of prospective purchasers who listen to Radio Station WAGA. (Aug. 21, 1942.)

03048. Macaroni—Qualities, Properties or Results, and Composition.—V. La Rosa & Sons, Inc., a corporation, 473 Kent Avenue, Brooklyn, N. Y., vendor-advertiser, engaged in selling a food product designated La Rosa Grade A Macaroni; and Andre Luotto, an individual trading

as Commercial Radio Service, 30 Rockefeller Plaza, New York City, engaged in the business of conducting an advertising agency which disseminated advertisements for a food product designated La Rosa Grade A Macaroni on behalf of V. La Rosa & Sons, Inc., agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(a) That La Rosa Grade A Macaroni, or the protein contained therein, is incapable of adding excess body weight; or

(b) That said macaroni will prevent acidosis; or

(c) That said macaroni product contains sufficient protein to prevent the destruction of body tissues, or, through its protein content or otherwise, will keep the body in a state of nitrogen balance; or

(d) That said macaroni product, through its bulk or roughage content or otherwise, will insure proper digestion and assimilation or will enable one to avoid a sluggish intestinal condition; or

(e) That said macaroni, when cooked and ready for serving, will provide per pound as much as 300 International or U. S. P. Units of Vitamin B-1.

The said V. La Rosa & Sons, Inc., and the said Andre Luotto, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 2, 1942.)

03049. Dog Food—Composition and Qualities, Properties, or Results.—

The Heger Products Co., Inc., a corporation 459 Como Avenue, St. Paul, Minn., vendor-advertiser, was engaged in selling a dog food designated Dog Nibs and agreed, in connection with the dissemination of future advertising, to cease and desist from using the word "meat" or any other word or term of similar import or meaning to designate or describe dehydrated meat or dehydrated beef meal, or any product which is not meat or beef in fact.

It is further agreed by The Heger Products Co., Inc., that in the dissemination of advertising by the means or in the manner above set out of the product designated Dog Nibs or any other dry dog food preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name it will forthwith cease and desist from representing, directly or by implication:

That it will reduce or cut feeding costs 50 percent or effect any definitely stated percentage savings when compared with other dog foods of similar type.

The Heger Products Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 2, 1942.)

03050.¹ Typewriters—Quality, Price, and Unique.—Remington Rand, Inc., a corporation, 465 Washington Street, Buffalo, N. Y., vendor-

¹ Supplemental.

advertiser, was engaged in selling typewriters and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That its typewriters will last the purchaser his lifetime.

(b) That a typewriter may be purchased at a certain price on terms without disclosing the material fact that such price does not include a carrying charge, if and when a carrying charge is made in addition to the price mentioned.

(c) That any model of its typewriters has more exclusive features than on all other typewriters combined or than on any combination of typewriters, or on any other typewriter when all of the functional features of each typewriter are not taken into consideration, and when such statements are not in accordance with the facts.

(d) That any feature of any of its typewriters is exclusive when it is possessed by another typewriter.

The said Remington Rand, Inc. 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 Inhibition (b) of Stipulation No. 02241² heretofore accepted and approved by the Commission on September 2, 1938, be amended and revised to read as follows:

(b) That respondent's portable typewriters can be purchased for 10¢ a day, unless the claim is explained by a statement, appearing in immediate conjunction therewith and in type equally as conspicuous, to the effect that such payments are in addition to a down payment and apply to only certain models; and that Stipulation No. 02241 is to remain in full force and effect and that the terms and agreements therein are not to be considered modified or altered in any way by this supplemental stipulation, with the exception that Inhibition (b) is amended and revised as hereinbefore set forth. (Sept. 4, 1942.)

03051. Petroleum Products—Qualities, Properties or Results, Comparative Merits, and Unique.—The American Oil Co., a corporation, American Building, Baltimore, Md., vendor-advertiser, was engaged in selling certain petroleum products designated Amoco Gas and Penn Amoco Permalube Processed Oil, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That internal combustion engines can utilize the maximum energy of Amoco Gas.

(b) That no other motor fuels have an antiknock rating equal to that of Amoco Gas.

(c) That its use eliminates "destructive" vibration from internal-combustion engines; or

(d) That Penn Amoco Permalube Processed Oil will tend to make an old car perform like it did when new, without expressly limiting such claim to any detergent action which the said product may have on engine deposits.

² See 27 F. T. C. 1630.

The said American Oil Co. agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Sept. 14, 1942.)

03052. Dog Food Preparations—Composition.—Battle Creek Dog Food Co., a corporation, trading as Miller's Dog Foods, Battle Creek, Mich., vendor-advertiser, engaged in selling various dry dog-food preparations designated "Miller's Kibbles," "Miller's Biscuits," "Miller's Puppy Meal," "Miller's Meaties," and "Miller's Ration"; and Paul C. Staake and Carl B. Schoonmaker, individuals and copartners, trading as Staake & Schoonmaker, a partnership, American National Bank Building, Kalamazoo, Mich., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of Battle Creek Dog Food Co., agreed, in connection with the dissemination of future advertising, to cease and desist from using the terms "Meat," "Meat Scraps," "dehydrated meat," "meat scrap," 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.

It is further agreed by Battle Creek Dog Food Co., Paul C. Staake and Carl B. Schoonmaker, and each of them, that, in the dissemination of advertising by the means, or in the manner, above set out, of the product designated Miller's Meaties, or any other dog food preparation of substantially the same composition, or possessing substantially the same properties, they will forthwith cease and desist from using the term "meat," "meat scrap," "dehydrated meat," "meat scrap," 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, or from the use of the expression "Meaties" in the brand or trade name of this product, or by any other expression, words, or means, that the said product contains meat.

The said Battle Creek Dog Food Co., Paul C. Staake and Carl D. Schoonmaker, 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. (Sept. 16, 1942.)

03053. Medicinal Preparation—Composition, Qualities, Properties or Results, Laboratories, and Safety.—The Adams Laboratories, Inc., a corporation, 4005 Washington Boulevard, St. Louis, Mo., vendor-advertiser, was engaged in selling a drug designated Prunlax, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That prune juice is the basis of Prunlax.

(b) That Prunlax moves the bowels in the natural way, and cannot cause griping, nausea, or other ill effects.

- (c) That Prunlax is a remedy or cure for constipation.
- (d) That Prunlax cleanses the system of poisonous wastes and rids it of poisons.
- (e) That Prunlax aids in toning up the liver or kidneys.
- (f) That Prunlax is effective in the treatment or prevention of backaches, headaches, bad breath, gas pains, biliousness, run-down and tired feeling, dizzy spells, colds, bloatedness, and swollen joints.
- (g) That Prunlax arouses glandular secretions.
- (h) That Prunlax will keep children full of pep or energy, or from becoming dull, slouchy, irritable, or jumpy.
- (i) That Prunlax will renew or strengthen lost energy.
- (j) That Prunlax arrests colitis, or the formation of hemorrhoids or fissures, or is effective in the treatment of these conditions.

The Adams Laboratories, Inc., further agreed that it will cease and desist from representing, through the use of the brand name "Prunlax," alone or in association with any other word, words, or pictorial representation, in the dissemination of description of such preparation, that said preparation derives its laxative properties from prunes.

The Adams Laboratories, Inc., further agreed that, in the dissemination of advertising by the means, and in the manner above set out, it will forthwith cease and desist from using the word "Laboratories," or other similar word, words, or phrases in its trade name, or in connection with its business, when it does not own, control, and direct an appropriately equipped laboratory where research work is conducted in connection with the production of its preparation.

The Adams Laboratories, Inc., further agreed that in the dissemination of advertising by the means, and in the manner above set out, of a medicinal preparation now designated Prunlax, or any other preparation of substantially the same composition, or possessing substantially the same properties, it will forthwith cease and desist from disseminating any advertisements which represent, directly or by implication, that the said preparation is 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, vomiting (stomach sickness), or other symptoms of appendicitis are present, and that the frequent or continued use thereof may result in dependency upon 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 warning statement to the same effect.

The said The Adams Laboratories, Inc., further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Sept. 18, 1942.)

03054. Medicinal Preparation—Qualities, Properties or Results, Doctor, Composition, and Safety.—C. E. Prescott, an individual, doing business under the trade name Prescott Drug Co., 190 South Main St., Memphis, Tenn., vendor-advertiser, was engaged in selling a drug designated “Dr. Sphinx’s Sarsaparilla and Iron with Iodide Potash” and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Dr. Sphinx’s Sarsaparilla and Iron with Iodide Potash is effective in the treatment of bad blood, rheumatism, stiff or sore joints, backaches, malaria, general run-down condition of health or stomach troubles.

(b) That Dr. Sphinx’s Sarsaparilla and Iron with Iodide Potash is a blood, liver, and kidney cleanser.

(c) By the use of the prefix “Dr.” in the brand name that Dr. Sphinx’s Sarsaparilla and Iron with Iodide Potash is a preparation manufactured or offered for sale by a doctor of medicine.

The said C. E. Prescott further agreed that in the dissemination of advertising by the means and in the manner above set out, he will forthwith cease and desist from using the word “Sarsaparilla” in the brand name of his preparation or to designate, describe, or refer to any preparation which does not contain a sufficient quantity of Sarsaparilla, as an active ingredient, to possess therapeutic value by reason of such Sarsaparilla content.

The said C. E. Prescott further agreed that in the dissemination of advertising by the means and in the manner above set out, of a medicinal preparation now designated Dr. Sphinx’s Sarsaparilla and Iron with Iodide Potash, or any other preparation of substantially the same composition or possessing substantially the same properties, he will forthwith cease and desist from disseminating any advertisements which fail to reveal that the said product should not be used by individuals suffering from active or latent tuberculosis or thyroid diseases or when abdominal pains (stomachache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present: *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 warning statement to the same effect.

The said C. E. Prescott further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Sept. 18, 1942.)

03055. Medicinal Preparation—Qualities, Properties or Results, Composition, and Safety.—Standard Sales Co., a corporation, 2231 First Ave., North, Birmingham, Ala., vendor-advertiser, was engaged in selling a preparation known as Speedo Headache Powders and agreed, in con-

nection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the said preparation will have any effect on colds in excess of such relief as it may afford for the pain and discomfort of head colds.

(b) That it will eliminate, remedy or cure head colds, minor muscular aches, simple neuralgia, or jittery nerves.

(c) That said preparation is a stimulant or stimulates.

(d) That said preparation contains special ingredients that dissolve in a hurry.

(e) That said preparation is safe.

The said Standard Sales Co. further agreed to cease and desist from disseminating or causing to be disseminated by the means and in the manner above set out any advertisement for the above said product which fails clearly to reveal 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, nor administered to, children: *Provided, however,* That such advertising material 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 Standard Sales Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 23, 1942.)

03056. *Stock Remedy—Qualities, Properties, or Results.*—Sterling Research Corp., a corporation, 775 Main Street, Buffalo, N. Y., was engaged in selling a stock remedy designated Ko-Ex-7 Powder and, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Ko-Ex-7 Powder is of any aid in the treatment of Mastitis.

The said Sterling Research Corp. further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Sept. 23, 1942.)

03057. *Cloth Fabric Garments—Composition and Nature.*—Sears, Roebuck and Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling cloth fabric garments made to imitate various furs and agreed, in connection with the dissemination of future advertising, to cease and desist from—

(a) Using the words "Persian" or "Leopard" or the names of any other animals, or words or terms of similar import or meaning to designate or describe garments or fabrics that are not made of or fabricated from the pelts of the animal or animals indicated unless such words or terms are, in the same place where used, plainly and clearly qualified by words of equal size and emphasis disclosing, by a full and true description of the fiber content of such

garment, or otherwise, that such garments or fabrics merely imitate in appearance the type of garment so designated and described.

(b) Using the word "fur" or the terms "fur effect fabric" or "fur fabric" or any word or term of similar import or meaning to designate, describe or refer to any fabric or garment that is not made of or fabricated from the pelt or pelts of fur bearing animals unless such word or term is in the same place where used, plainly and clearly qualified by words of equal size and emphasis disclosing, by a full and true description of the fiber content of such garment, or otherwise, that the said fabric or garment merely imitates the appearance of fur.

(c) From representing directly or by depiction or implication or in any manner by any means that any textile fabric or any garment made of a textile fabric is made of or fabricated from the pelt or fur of any animal.

The said Sears, Roebuck and Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 28, 1942.)

03058. Medicinal Preparation—Qualities, Properties, or Results.—B. G. Pratt Co., a corporation, 50 Church Street, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Sulfo-Bath and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said product is effective for the relief of nervousness, colds, insomnia, pimples, eczema, hives or poison ivy.

(b) That said product has any effect on rheumatism, neuritis, sciatica, arthritis or lumbago except to the extent that it may relieve the pains of such conditions.

(c) That said product is "health-giving" or provides or causes radiant health or that said product will give one energy.

(d) That by use of said product sulphur will be absorbed into the system or that said product will give one a healthy or beautiful complexion.

(e) That said product relieves or aids in relieving the conditions which cause dandruff, itching scalp or falling hair or that said product relieves all skin troubles.

(f) That said product is effective in severe cases of athlete's foot.

The said B. G. Pratt Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 28, 1942.)

03059. Wheat Germ Product—Composition and Qualities, Properties, or Results.—Claire L. Specht and Emil J. Specht, copartners, trading as Vegetable Juice & Products Co., and Vegetable Products Co., 480 East Main Street at Windsor, Rochester, N. Y., vendor-advertisers, were engaged in selling a wheat germ product designated ViVi-Ta Superior Wheat Germ and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That ViVi-Ta Superior Wheat Germ will provide users with any significant amounts of vitamin A or of the minerals—calcium, iron, copper, magnesium, or manganese; or

(b) That ViVi-Ta Superior Wheat Germ can be relied upon to prevent colitis, sterility, eye cataracts, miscarriages or gray hair, or to successfully treat catarrh, arthritis, neuritis, eczema or anemia, or to stimulate the liver or pancreas, or to strengthen the heart muscles, or to retard old age, or to normalize calcium metabolism, or to improve the condition of the sinus membranes or the condition of the hair, nails or scalp, or to increase nerve energy, vigor, mental powers, or nerve and muscle tone, or to provide an effective aid during the period of menopause, or to exert a specific nourishing effect on the nerves or brain; or

(c) That ViVi-Ta Superior Wheat Germ will have any value in cases of constipation, lack of energy, devitalize tissues and glands and ill health except where and to the extent that such conditions may be due to a deficiency of the vitamins found in said product.

The said Claire L. Specht and the said Emil J. Specht further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 28, 1942.)

03060. Medicinal Preparation—Qualities, Properties or Results; Nature, and Safety.—The Delano Co., Inc., a corporation, and F. H. Delano, an individual, 558 East Genesee Street, Syracuse, N. Y., vendor-advertisers, were engaged in selling a medicinal preparation designated "Delano's" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Delano's is a remedy or cure for rheumatism and is a tonic or alternative.

The Delano Co., Inc. and F. H. Delano further agreed that in the dissemination of advertising by the means and in the manner above set out, of the medicinal preparation designated "Delano's," 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 which represent directly or by implication, that the said preparation is 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, vomiting (stomach sickness), or other symptoms of appendicitis are present, that the frequent or continued use thereof may result in dependence on laxatives, and that the administration of the preparation regularly or over a considerable period of time, unsupervised by a physician may result in injury to the user; *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 labelling, contain a warning statement to the same effect.

The said The Delano Co., Inc. and F. H. Delano further agreed not to publish or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Oct. 6, 1942.)

03061. Medicinal Preparation—Qualities, Properties or Results, and Safety.—Roy E. Phipps, an individual trading as Taylor Drug & Seed Co. and Taylor Drug Co., 1530 Clarendon Avenue, Bessemer, Ala., vendor-advertiser, was engaged in selling a medicinal preparation designated "Taylor's Kolnox Compound" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That this product will aid the system to maintain proper alkaline balance.

(b) That it is a cold remedy and that it will prevent, fight, control or rid one of colds.

(c) That it will clear the system of poison.

(d) That it will relieve bad coughs, or have any value with respect thereto in excess of its ability to exert a slight cooling effect on the throat.

(e) That it will relieve or ease congestion.

(f) By use of the expression "Kolnox" as part of the brand name of the preparation or by any other expression, words or means, that the said preparation will knock or cure colds.

It is further agreed by the said Roy E. Phipps that, in soliciting the sale of a medicinal preparation now designated Taylor's Kolnox Compound, or any other preparation of substantially the same composition or possessing substantially the same properties, 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 safe to use in all cases, or which fails to reveal—that said preparation should not be used when abdominal pain (stomach ache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present; *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 Roy E. Phipps also agreed not to publish or cause to be published any testimonial contrary to the foregoing agreement. (Oct. 6, 1942.)

03062. Cigarettes—Unique and Safety.—Estabrook & Eaton Co., a corporation, 256 Washington Street, Boston, Mass., vendor-advertiser, was engaged in selling Leighton cigarettes and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Leighton cigarettes are the only ones containing nature-ripe tobacco.

(b) That Leighton cigarettes do not irritate the throat or do not affect the nerves.

The said Estabrook & Eaton Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 6, 1942.)

03063. Dog Food Preparations—Qualities, Properties or Results, and Composition.—Security Mills, Inc., a corporation, Knoxville, Tenn., vendor-advertiser, engaged in selling certain dry dog food preparations in meal, cubes and kibbled biscuit form and sold generally under the trade name "Security Dog Food"; and C. K. Liller, W. W. Neal, and J. L. Battle, individuals, trading as Liller, Neal & Battle, Atlanta, Ga., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Security Mills, Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Security Dog Food will give added health to dogs.

(b) That Security Dog Food possesses value in building resistance to infectious or other type diseases in excess of its ability to furnish food essentials necessary to the maintenance of such resistance as is normal to the healthy animal.

(c) That Security Dog Food contains meat or beef;

(d) That Security Dog Food will increase the number or size of litters except in those instances where it is indicated that the bitches have been maintained on rations inadequate for reproduction.

(e) That Security Dog Food will provide a defense against colds or be of any value in building resistance thereto except in those instances where it is indicated that the dog's normal resistance may be low due to nutritional deficiencies in its daily diet.

(f) That Security Dog Food will protect dogs against lack of appetite, skin diseases and digestive upsets except in those instances where such lack of appetite, skin diseases and digestive upsets may be directly attributable to a nutritional deficiency.

The said Security Mills, Inc., C. K. Liller, W. W. Neal, and J. L. Battle, and each of them, further agreed not to publish, disseminate or cause to be published or disseminated any testimonial contrary to the foregoing agreement. (Oct. 15, 1942.)

03064. Animal Food Supplements—Composition, Qualities, Properties or Results, Comparative Merits, and Testimonials.—W. N. Martin, an individual, trading as Martin-Lane Co., Vernon, Tex., vendor-advertiser, was engaged in selling certain animal food supplements designated "Crown Minerals and Yeast" and "Crown Range Minerals" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Crown Minerals and Yeast and Crown Range Minerals are rich in vitamins A and E.

(b) That by feeding Crown Minerals and Yeast a saving of 25 to 30 percent or any other definitely stated percentage saving may be effected.

(c) That it will effect an added gain in weight of 25 to 30 percent or any other definitely stated percentage gain.

(d) That Crown Minerals and Yeast will prevent or cure other than secondary anemias.

(e) That Crown Minerals and Yeast will promote higher hatchability in chickens and be effective in the prevention or cure of coccidiosis.

(f) That Crown Minerals and Yeast will keep down worm infestation.

(g) That feeding Crown Minerals and Yeast will reduce or cause less loss in the weight of hogs shipped to market.

(h) That Crown Minerals and Yeast will eliminate or remove the death loss of pigs except in those instances where the loss is attributable to a mineral-deficient diet.

(i) That by feeding Crown Minerals and Yeast a 100 lbs. gain is possible or can be made on a good average three-year old steer with less than 700 pounds of meal and corn and 400 pounds of hay.

(j) That Crown Minerals and Yeast is capable of causing a 15 percent or larger increase in egg production over that of other good commercial feeds or mineral or yeast mixtures or effect a 20 percent increase in the production of livable chicks without limiting such comparison to ordinary range feeding or such method of feeding as is nutritionally inadequate.

The said W. N. Martin further agreed to cease and desist from disseminating any testimonial relative to the merits of Crown Minerals and Yeast or Crown Range Minerals unless such testimonial was in fact received from users of these products.

The said W. N. Martin further agreed not to publish, disseminate or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Oct. 15, 1942.)

03065. Medicinal Preparation—Qualities, Properties or Results, and History.—James P. Galligan, an individual doing business under the trade name Bathritis Co., 207 North Michigan Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a drug preparation designated "Bathritis" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Bathritis when used as directed in a bath has any therapeutic effect in the treatment of rheumatism, neuralgia, neuritis, backache, simple arthritis or sore, aching muscles and when used as a liniment or counter-irritant for such conditions, is effective in excess of relieving pain.

- (b) That Bathritis relieves sprains, stiffness and swelling.
- (c) That Bathritis works toward restoring normal active muscular health.
- (d) That Bathritis is effective in comforting inflamed tissues.
- (e) That Bathritis is effective in dispelling body odors.
- (f) That Bathritis is a new discovery.

The said James P. Galligan further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 15, 1942.)

03066. *Cosmetic—Qualities, Properties, or Results.*—Delettrez, Inc., a corporation, 21-09 Borden Avenue, Long Island City, N. Y., vendor-advertiser, was engaged in selling a certain cosmetic designated Liquid Chin Strap 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 product, Liquid Chin Strap will help ward off the appearance of age or help ward off greyish surface lines.
- (b) That the use of its product will heighten the arch or sweep of chin lines.
- (c) That its product has a therapeutic effect on the skin or contour thereof or has a physiological effect in excess of a temporary feeling of an astringent at the site of its application; or
- (d) That the use of its product will result even in the temporary disappearance of crepy skin.

The said Delettrez, Inc. further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Oct. 16, 1942.)

03067. *Medicinal Preparation—Qualities, Properties or Results, Nature, and Safety.*—Charles P. Monroe, an individual trading as Man-O-Ree Products, 516 North Edgeworth Street, Greensboro, N. C., vendor-advertiser, was engaged in selling a medicinal preparation recommended as a tonic-laxative and designated Man-O-Ree and agreed, in connection with the dissemination of future advertising, to cease and desist—

- (a) From representing, directly or by implication, that said preparation is an aid to digestion; or
- (b) From representing, directly or by implication, that said preparation will rid the system of poisons or gases; or
- (c) From representing, directly or by implication, that said preparation can be relied upon to relieve gastric disturbances, heartburn, indigestion, stomach disorders, nervousness, insomnia, run-down condition or fatigue; or
- (d) From representing, directly or by implication, that said preparation will soothe the nerves; or
- (e) From representing, directly or by implication, that said preparation is incapable of having any deleterious effect on digestive organs; or
- (f) From representing, directly or by implication, that said product is a tonic-laxative or possesses the rebuilding qualities of a tonic; or
- (g) From using any advertisement which fails to reveal—

(1) that said preparation should not be used when abdominal pains (Stomach ache, cramp, colic), nausea, vomiting (stomach-sickness), or other symptoms of appendicitis are present, and

(2) that frequent or continued use of said preparation may result in dependence on laxatives; *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 cautions or warnings to the same effect as (1) and (2) above.

The said Charles P. Monroe further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 21, 1942.)

03068. Medicinal Preparation—Safety.—Beechams Pills, Inc., a corporation, 60 Orange Street, Bloomfield, N. J., vendor-advertiser, engaged in selling a medicinal preparation designated Beecham's Laxative Pills; and Atherton & Currier, Inc., a corporation, 420 Lexington Ave., 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 Beecham Pills, Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that the product should not be used when abdominal pain (stomach ache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present; *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 Beechams Pills, Inc., and Atherton & Currier, 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. (Oct. 21, 1942.)

03069. Cosmetic Preparations—Qualities, Properties or Results, Composition, Test, and Chemist.—William Banks, an individual trading as Koto Cosmetic Co., 7039 Monticello Street, Pittsburgh, Pa., vendor-advertiser, was engaged in selling cosmetic preparations designated Koto Cleansing Cream, Koto Vanishing Cream, and Koto Lemon-Almond Lotion and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any of these preparations will be effective in preventing or curing blackheads, pimples, freckles, or wrinkles, or in removing blemishes from the skin.

(b) That any of these preparations has any therapeutic value for "skin troubles," or will produce a clear skin for one who uses them.

- (c) That Koto Cleansing Cream is free from wax, or will penetrate the pores.
- (d) That Koto Lemon-Almond Lotion will whiten the skin; or that it has been tested or approved by a chemist or by any person qualified to test or approve it when such is not the fact.
- (e) That he employs a chemist and a beautician, when such is not the fact.

The said William Banks further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 23, 1942.)

03070. **Semiprecious Stones—Comparative Merits, Source or Origin, and Nature.**—Kimberly Gem Co., Inc., a corporation, 503 Fifth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling semiprecious stones designated Zircons and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Zircons will cut glass or withstand all acid tests that diamonds will; or
- (b) Through the use of the word "Kimberly" as a part of its trade name, without full and plain disclosure of the true source of its Zircons, that its Zircons were imported from Kimberly, South Africa;
- (c) That Zircons are diamonds or any kind of a diamond.

The said Kimberly Gem Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 30, 1942.)

03071. **Medicinal Preparation—Qualities, Properties, or Results.**—Benederm, Inc., a corporation, Beverly Hills, Calif., vendor-advertiser, engaged in selling a medicinal preparation designated Benederm; and Fred W. Fox, an individual, 8506 Sunset Boulevard, 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 Benederm, Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the product is healing or that it is a remedy for or effective in the treatment of skin eruptions.
- (b) That the product renders normally present fatty detritus soluble or that it facilitates removal of the contained carbon particles.

The said Benederm, Inc., and Fred W. Fox further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 3, 1942.)

03072. **Medicinal Preparation—Qualities, Properties or Results, and Laboratories.**—Angela Sykes, an individual trading as Sykes Laboratories, 1024 Wolfram Street, Chicago, Ill., vendor-advertiser, was engaged in selling a medical preparation designated Ardine and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said product is a sure or dependable contraceptive or that it can be relied upon entirely to prevent conception.

(b) That said product will cleanse the entire vaginal tract or that said product becomes Dankin's Solution when diluted in four ounces of water.

The said Angela Sykes further agreed to forthwith cease and desist from representing, by use of the word "laboratories," or any other word of similar meaning or import, that she maintains, operates, or controls a laboratory or laboratories in connection with the preparation and sale of her product.

The said Angela Sykes agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 3, 1942.)

03073. Fountain Pens and Picture Frames—Guarantee, Qualities, Properties or Results, Free Service, and Composition.—Sperry Candy Co., a corporation, 133 West Pittsburgh Avenue, Milwaukee, Wis., vendor-advertiser, engaged in selling candy, including the Denver Sandwich Candy Bar; and A. E. Meyerhoff and Madelaine G. Meyerhoff, copartners, doing business under the trade name of Arthur Meyerhoff & Co., 410 North Michigan Avenue, Chicago, Ill., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Sperry Candy Co., agreed, in connection with the dissemination of future advertising, to cease and desist from:

(a) Representing, through the use of the words "Lifetime Guaranteed," or in any other manner, that the said fountain pens will last a lifetime.

(b) Representing that said pens will be repaired or damaged parts thereof replaced without cost when any charge is made in connection therewith.

(c) Representing that the frames furnished with color-photo miniatures are made of ivory or gold when in fact said frames are merely of ivory color or decorated with gold-colored paint.

The said Sperry Candy Co. and A. E. Meyerhoff and Madelaine G. Meyerhoff, and each of them, hereby agreed not to publish, disseminate, or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (Nov. 9, 1942.)

03074. Medicinal Preparations—Qualities, Properties or Results, and Safety.—John K. Brater & Co., Inc., a corporation, 369 Third Avenue, New York, N. Y., vendor-advertiser, was engaged in selling certain medicinal preparations designated Brater's Power and Brater's Asnarettes and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That these preparations are beneficial for the underlying causes of asthma, or that they are a remedy or cure for asthma.

(b) That the use of these preparations will assure one of a quiet night or free one from tortuous breathing.

(c) That these preparations are beneficial in many forms of hay fever.

John K. Brater & Co., Inc., further agreed that in the dissemination of advertising by the means and in the manner above set out, of the preparations now designated Brater's Powder and Brater's Asnarettes, or any other preparations of substantially the same composition or possessing substantially the same properties, whether sold under those names or any other names, it will forthwith cease and desist from disseminating any advertisements which fail to reveal the fact that their frequent or continued use should be avoided, especially by elderly persons, and that their use should be discontinued if dryness of the throat, excessively rapid pulse, or blurring of the vision appears: *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 John K. Brater & Co., Inc., further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Nov. 9, 1942.)

03075. Medicinal Preparations—Qualities, Properties or Results, and Safety.—Stephen Gardner, an individual doing business as Flurene Chemicals, Ltd., Washington, N. C., vendor-advertiser, was engaged in selling two medicinal preparations designated Flurene Nose and Throat Drops and Flurene Salve and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Flurene Nose and Throat Drops is of benefit in relieving the nasal swelling of asthma or in assisting sinus drainage.

(b) That the use of Flurene Nose and Throat Drops will prevent hay fever attacks.

(c) That Flurene Nose and Throat Drops is a preventative of colds.

(d) That Flurene Salve loosens phlegm or is of assistance in breaking up local congestion of the upper respiratory passage.

The said Stephen Gardner further agreed that in the dissemination of advertising, by the means and in the manner above set out, of a medicinal preparation now designated Flurene Nose and Throat Drops 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 to reveal that the said preparation should not be used in excessive amounts, that it should not be used by infants and younger children except on competent advice, and that individuals suffering from high blood

pressure, heart disease, diabetes, or thyroid trouble should not use the preparation except on competent advice: *Provided, however,* That such advertisements need only contain the statement: CAUTION, Use Only as Directed," if and when the direction 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 Stephen Gardner further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 16, 1942.)

03076. Medicinal Preparation—Qualities, Properties or Results, and Comparative Merits.—G. A. Labrador, an individual, Post Office Box 317, Honolulu, T. H., vendor-advertiser, was engaged in selling a medicinal preparation designated Curadalis and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That this preparation will relieve or cure all types of skin diseases or is a remedy therefor.

(b) That this preparation will be effective in treating skin diseases in cases where other preparations have failed.

(c) That this preparation has any therapeutic value in excess of relief for minor skin irritations.

(d) That this preparation will relieve tropical skin diseases which occur among sugar-cane and pineapple workers.

The said G. A. Labrador further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Nov. 16, 1942.)

03077. Uniforms—Composition.—William Lapedes, an individual doing business under the trade name of Lion Uniform Co., Lion Building, Dayton, Ohio, vendor-advertiser, was engaged in selling uniforms designated Lion-Bilt Uniforms and agreed, in connection with the dissemination of future advertising, to cease and desist from:

(a) Using the words "wool," "100% wool," "worsted," or "serge" or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to 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 the constituent fibers or materials of such product.

(b) Using the word "mohair," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of 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 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.

(c) 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 such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

It is further ordered, that no provision of this stipulation 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 rules and regulations promulgated thereunder.

The said William Lapedes agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 16, 1942.)

03078. **Electric Fence Controllers—Prices, Patented, Certified or Approved, and Unique.**—Landon P. Smith, Inc., a corporation, Irvington, N. J., vendor-advertiser, was engaged in selling certain electric-fence controllers designated Red Devil Electric Fencers and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That it has sold its electric-fence controllers at materially higher prices than the selling prices at which they are advertised for sale and that its controllers have any value in excess of the recent market prices at which such controllers have been regularly sold.

(b) That the timer in its electric-fence controllers is patented until such time as letters patent thereon have actually been issued.

(c) That its electric-fence controllers have been certified or approved by any agricultural college in the absence of such specific approval having actually been made; and

(d) That such advantages combining safety, efficiency, and economy of operation as its electric-fence controllers may have are exclusive.

The said Landon P. Smith, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 17, 1942.)

03079. **Bread—Composition, Qualities, Properties or Results, Indorsement or Approval, and Success, Use, or Standing.**—Edwin Erickson, Alfred Erickson, Leif Erickson, and Agnes Erickson, copartners, trading as Federal Bakery Co., Winona, Minn., vendor-advertisers, engaged in selling a certain food product, designated Federal Prize Winner Bread; and M. H. White, and H. R. Wiecking, copartners, trading as Winona Radio Service, 216 Center Street, Winona, Minn., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Federal Bakery Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Federal Prize Winner Bread supplies substantial amounts of the vitamins and the food minerals.

(b) That this bread conforms to the recommendations of the Committee on Food and Nutrition of the National Research Council.

(c) That the consumption of this bread in customary amounts will provide the daily minimum requirement for Thiamin.

(d) That this bread is made with whole milk as one of its ingredients.

(e) That more of this bread is sold in the Winona, Minnesota market than any other bread; or

(f) That because of the presence of Thiamin in this bread, it will aid in the digestion of food.

The said Edwin Erickson, Alfred Erickson, Leif Erickson, Agnes Erickson, M. H. White, and H. R. Wiecking, and each of them, further agreed not to publish or disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Dec. 2, 1942.)

03080. Medicinal Preparation—Safety.—Reese Chemical Co., a corporation; Cleveland, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Blu-Tabs and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails clearly to reveal that frequent or continued use of the said preparation may cause nervousness, restlessness or sleeplessness; that individuals suffering from high-blood pressure, heart disease, diabetes or thyroid trouble should not use such preparation except on competent advice and that it should not be used in case of lung disease, chronic cough or goiter (thyroid disease), except upon the advice of a physician and that if a skin rash appears; use thereof should be discontinued: *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 Reese Chemical Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 2, 1942.)

03081. Dry Dog Food Preparation—Composition and Economy.—The G. E. Conkey Co., a corporation, 6529 Broadway Avenue, Cleveland, Ohio, vendor-advertiser, engaged in selling a certain dry dog food preparation in cube, meal, and pellet form designated "Conkeys Y-O Dog Ration"; and Rogers & Smith, a corporation, 20 North Wacker Drive, Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of The G. E. Conkey Co., agreed in connection with the dissemination of future advertising, to cease and desist from using the terms "meat," "Dehydrated meat,"

"beef," or "dehydrated beef," or any other term of similar import or meaning to designate or describe dehydrated meat meal or beef meal, or any product which is not beef or meat in fact.

It is further agreed by The G. E. Conkey Co. and Rogers & Smith, and each of them that in connection with the dissemination of advertising by the means and in the manner above set out of the product designated "Conkeys Y-O Dog Ration" or any other dry dog food 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 representing directly or by implication:

That such dog food will effect a saving of 75 cents out of every dollar spent for dog food or save any definitely stated amount.

The G. E. Conkey Co. and Rogers & Smith and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Dec. 9, 1942.)

03082. Livestock and Poultry Feeds—History, Composition, Qualities, Properties or Results, Nature, Comparative Merits, Etc.—Lipscomb Grain & Seed Co., Inc., a corporation, West Phelps Street, Springfield, Mo., vendor-advertiser, was engaged in selling certain livestock and poultry feeds designated Lipscomb's 21% Protein Breeder Egg Mash, Lipscomb's Sungold 36% Protein Hog Supplement, Lipscomb's Sungold Special Wormer Mash, Lipscomb's Sungold Egg Mash and Lipscomb's Sungold Chick Starter with Worm-X and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That there has been discovered on the Lipscomb Research Farm, or added to any of its products, a new or secret ingredient.

(b) That Lipscomb's Sungold Special Wormer Mash permits the raising of worm-free chickens; combats tape worms, or gizzard worms in the lumen of the intestines, or any worms in the lumen of the intestines or the larvae of worms (except where specifically limited to round worms); is an eggicide; attacks worm eggs in the intestines of the fowls or in the walls or lumen of the intestines, or prevents worms.

(c) That Lipscomb's Sungold Special Wormer Mash is a complete wormer.

(d) That Lipscomb's Sungold Special Wormer Mash is a complete feed.

(e) That eggs from hens fed on Lipscomb's Sungold Egg Mash contain an increased amount of iodine, or that the consumption of said eggs will prevent goiter in man.

(f) That Worm-X, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name or names, eliminates the high cost of eggs, or the loss of eggs, or that it is an exclusive compound.

(g) That Lipscomb's 21% Protein Breeder Egg Mash insures high fertility, high hatchability, high egg production; or assures fresh or stronger or better poultry.

(h) That eggs from hens fed on said product are fortified with Vitamin D.

(i) That Lipscomb's Sungold Chick Starter, with Worm-X, is the most carefully balanced or scientifically correct mash on the market; or that said product enables the raiser to have better chicks at less cost, makes them larger, makes the flock more uniform in size or better feather; or that it will keep fowls free from worms.

The said Lipscomb Grain & Seed Co., Inc., further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Dec. 15, 1942.)

03083. **Permanent Wave Supplies—Qualities, Properties or Results, Composition, and Nature.**—Bonat & Bonat, Inc., a corporation, 395 Fourth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling supplies for use in giving permanent waves consisting of various solutions and pads sold under the names of Padol Machineless Permanent Wave and Lifeoil Machine Permanent Wave and a shampoo designated Dio Dane No. 100 and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the Padol Machineless Permanent Wave nourishes the hair or gives the hair a deeper wave; or

(b) That Lifeoil Machine Permanent Wave pads contain lanolin; or

(c) That Dio Dane No. 100 nourishes the hair or is not a soap.

The said Bonat & Bonat, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 15, 1942.)

03084. **Coal Tar Hair Dye Product—Safety.**—Valligny Products, Inc., a corporation, 254 West Thirty-First Street, New York, N. Y., vendor-advertiser, was engaged in selling a certain coal-tar hair-dye product designated "Shampoo-Kolor" 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. (Dec. 15, 1942.)

03085. **Medicinal Preparation—Qualities, Properties or Results, and Earnings or Profits.**—A. P. Klase, an individual trading as Halex Co., P. O. Box 1945, Sappington, Mo., vendor-advertiser, was engaged in selling a medicinal preparation designated Halex and agreed, in con-

nection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(a) That said product is of value for hayfever, asthma, catarrh, migraine, sinusitis, sinus trouble, toothache, cold sores, drowsiness, fainting spells, lung colds, influenza, or sore throat.

(b) That prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings within a specified period of time which are in excess of the average net profits or earnings which have heretofore consistently been 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.

The said A. P. Klase agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 17, 1942.)

03086. **Radio Broadcasting Facilities—Unique, and Qualities, Properties, or Results.**—Scranton Broadcasters, Inc., a corporation operating Radio Station WGBI, 1000 Wyoming Avenue, Scranton, Pa., vendor-advertiser, was engaged in selling the use of its radio-transmittal facilities and power and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Radio Station WGBI is the only radio station heard in the Scranton-Wilkes-Barre market area.

(b) That outside radio stations are not heard in the Scranton-Wilkes-Barre market area.

(c) That Radio Station WGBI is the only regional or clear channel station serving the Scranton-Wilkes-Barre market area.

(d) That Radio Station WGBI covers the entire territory of northeastern Pennsylvania.

(e) That a survey shows that 98 percent of the daytime listeners or 96 percent of the nighttime listeners in Scranton's home county of Lackawanna regularly listen to Radio Station WGBI, or from misrepresenting in any manner the station's audience or coverage as shown by surveys or otherwise.

Scranton Broadcasters, Inc., further agreed to cease and desist from misrepresenting through exaggeration the number of prospective purchasers who listen to Radio Station WGBI, or the territory which it covers. (Dec. 17, 1942.)

03087. **Food Tablets and Drug Tablets—Qualities, Properties or Results, Composition, Nature, and Safety.**—Bertha B. Johnson, an individual, trading as Coates Concentrates, 20 East Jackson Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling food tablets designated as Coates C8 Vegetable Tablets, Coates C7 Vegetable Tablets, Coates C9 Vegetable Tablets, Coates C10 Vegetable Tablets, Coates B5 Vegetable and Dulse Tablets, Coates B6 Tablets, Coates B4 Vegetable and Dulse Tablets, Coates B3 Vegetable Tablets, Coates B2 Vegetable Tablets, Coates B1 Vegetable Tablets, Coates BA Vegetable Tablets,

Coates C16 Vegetable Tablets, Coates C15 Tablets, Coates C13 Vegetable Tablets, Coates C11 Tablets, and two drug tablets designated as Coates C14 Tablets and Coates Concentrates C12 Laxative Tonic Tablets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said tablets will correct, prevent, or overcome mineral or vitamin deficiencies.

(b) That Coates C11 tablets will relieve symptoms of high blood pressure or lower the blood pressure.

(c) That said tablets contain concentrated minerals or that they will eliminate calcium deposits, or that said tablets will provide a balanced mineral or vitamin diet, or will correct, overcome, or prevent lack of mineral balance.

(d) That said tablets will give one health.

(e) That Coates B6 tablets are a tonic or will overcome "tired feeling."

(f) That any one of said tablets will provide more minerals and vitamins than one would obtain from assimilating two pounds of fresh vegetables.

(g) That said tablets will provide an alkaline balance or are tissue-building foods, or that cooking tends to destroy minerals, or that said tablets are rich in vitamins or minerals.

(h) That diseases will respond favorably to use of such tablets or that such tablets will build nails, hair, or skin or give physical resistance.

(i) That said tablets will provide a substantial amount of silicon for the enamel of bones and teeth or that said tablets will preserve youthfulness, relieve pain, balance weight or heal.

(j) That said tablets will make bone and enamel hard or that they beautify or promote the flow of bile or tone the liver.

(k) That said tablets are a brain or nerve food or prevent wrinkles, indifference, or toxic nervousness, or that said tablets aid body processes or are important to the liver, kidneys, spleen or pancreas, or that they provide laxative effects.

It is also hereby agreed by Bertha B. Johnson that in the dissemination of advertising by the means and in the manner above set out of drug preparations now designated as Coates C14 Tablets and Coates Concentrates C12 Laxative Tonic Tablets, or of any other preparations of substantially the same composition or possessing substantially the same properties, whether sold under those names or any other names, she will forthwith cease and desist from disseminating any advertisement which fails clearly to reveal that said preparations should not be used when stomach ache (cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present: *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 a warning to the same effect.

It is also hereby agreed by Bertha B. Johnson that she will forthwith cease and desist from representing that Coates C12 Tablets are a tonic, cure for constipation, make one feel younger or keep joints or tendons supple, or that Coates C14 Tablets or Coates Concentrates C12 Laxative Tonic Tablets contain no drugs.

The said Bertha B. Johnson agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 24, 1942.)

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION¹

BENTON ANNOUNCEMENTS, INC. v. FEDERAL TRADE COMMISSION²

No. 195—F. T. C. Dock. 3425

(Circuit Court of Appeals, Second Circuit. July 6, 1942)

CEASE AND DESIST ORDERS—EVIDENCE—WHERE CONFLICTING.

On petition to review order of Federal Trade Commission directing petitioner to cease and desist from unfair trade practices, commission's decision on conflicting evidence is final.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—MANUFACTURE OR PREPARATION OF PRODUCT—"ENGRAVED," ETC.

Where special process by which petitioner's stationery was prepared did not come within definition of "engraving" as defined by Federal Trade Commission and commission's definition was supported by conflicting evidence, commission's order directing petitioner to cease and desist from using words "engraved," "engraving" or "engravers" to describe their stationery or process by which they made it would be affirmed.

(The syllabus, with substituted captions, is taken from 130 F. (2d) 254)

On petition to review order of Commission, order affirmed.

Mr. Carlton A. Fisher, of Buffalo, N. Y., and *Mr. John A. Bresnahan*, of Washington, D. C., for petitioner.

¹ During the period covered by this volume, i. e., July 1, 1942, to December 31, 1942, inclusive, the Supreme Court on October 12, 1942, in *Piuma v. United States*, 317 U. S. 637; 63 S. Ct. 28, denied petition for certiorari to review the decision of the Circuit Court of Appeals for the Ninth Circuit in *Joseph A. Piuma v. United States*, 126 F. (2d) 601; 34 F. T. C. 1837.

Said decision upheld the judgment of the District Court for the Southern District of California, Central Division, in awarding civil penalties in the sum of \$3,250 against defendant Piuma for violation of the Commission's cease and desist order against him in Docket 2229, 24 F. T. C. 939, through statements and representations in subsequent advertisements of his "Glendage" gland tablets in newspapers of wide interstate circulation. See, for opinion and decision of District Court *United States v. Piuma*, 40 F. Supp. 119, 33 F. T. C. 1827.

During said period the Supreme Court also on November 23, 1942, denied petition for certiorari to review the decision of the Circuit Court of Appeals for the Seventh Circuit in *Standard Distributing Co. v. Federal Trade Commission*, 129 F. (2d) 64, 34 F. T. C. 1863. See decree of Circuit Court of Appeals in said matter, and footnote, at p. 944, *infra*.

² Reported in 130 F. (2d) 254. For case before Commission, see 31 F. T. C. 882.

Mr. James T. Welch: Mr. W. T. Kelley, chief counsel; *Mr. Martin A. Morrison*, asst. chief counsel; *Mr. Merle P. Lyons* and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, all of Washington, D. C., for Commission.

Before L. HAND, AUGUSTUS N. HAND, and CLARK, Circuit Judges.

Per Curiam:

This is a petition to review an order of the Federal Trade Commission which directed the petitioner to "cease and desist" from using the words "engraved," "engraving," or "engravers" to describe their stationery or the process by which they make it. That process is to engrave a metal plate in the usual way, but not to ink it; next to print the text or design upon the paper with ordinary type; finally to press the printed paper upon the surface of the plate hard enough to "bump up," or emboss, it where it touches the engraved text or design on the plate. To do this obviously requires absolutely perfect registry of the printing with the engraved design, and this the petitioner secures by a method not generally known. The process is much cheaper than ordinary engraving, which the Commission described in the following finding. "The word 'engraving' * * * may be applied either to an engraved intaglio plate * * * or to the impressions made from such a plate. Such plates are cut or incised * * * in all cases * * * below the surface of the plate. To make impressions from such a plate, the ink is applied to the plate, then the plate is wiped so that the ink remains only in the lines cut below the surface. The inked plate is then put upon a piece of stationery * * * to be engraved, and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper * * *" So far there is no dispute; the critical finding was as follows: "The words 'engraving' and 'engraved,' when used in connection with * * * business and social stationery, mean * * * that the stationery products * * * described contain * * * designs which * * * are the result of the application, under pressure, of metal plates which have been specially engraved * * * and are used in the production of such stationery by the process more particularly described in the foregoing paragraph."

As to this finding the testimony was in conflict; but the Commission produced witnesses familiar with the craft who swore that to the ordinary buyer the word, "engraved," which the petitioner used to describe its stationery, meant the older process. The petitioner does not assert that these witnesses did not give any support to the

finding; it merely says they were not reliable because they disagreed among themselves, because the Commission should have accepted the more dependable testimony of the petitioner's own witnesses; and because in any event the meaning of the word must be determined by recourse to dictionaries. It is too well settled to require the citation of authority that the Commission's decision on conflict[255]ing evidence is final. As for dictionaries, words mean what people understand them to mean, and dictionaries are only one source; persons whose business carries them among the buyers of a product are certainly qualified sources of information as to the buyers' understanding of the words they hear and use.

It is true that few, if any, but experts in the craft can distinguish between "engraving" as the Commission has defined it and the petitioner's stationery; nevertheless, people like to get what they think they are getting, and courts have steadfastly refused in this class of cases to demand justification for their preferences. Shoddy and petty motives may control those preferences; but if the buyers wish to be snobs, the law will protect them in their snobbery. "* * * the public is entitled to get what it chooses though the choice may be dictated by caprice or by fashion or perhaps by ignorance." *Federal Trade Commission v. Algoma Lumber Company*, 291 U. S. 67, 78 [18 F. T. C. 669]; *Fioret Sales Co. v. Federal Trade Commission*, 100 F. (2d) 358 (C. C. A. 2) [27 F. T. C. 1702]. The case at bar is in substance nearly the same as that which we decided in *Federal Trade Commission v. Non-Plate Engraving Co., Inc.*, 49 F. (2d) 766 [15 F. T. C. 597].

Order affirmed.

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. July 16, 1942)

Decree (1) affirming, on petition to review, and following opinion and decision of said Court on June 9, 1942, 129 F. (2d) 64, 34 F. T. C. 1863, order of Commission in Docket 4135, 33 F. T. C. 1098, which required respondents, their representatives, etc., in connection with offer, etc., in commerce, of any merchandise, to cease and desist from supplying, etc., others with any merchandise together with push or pull cards, punch boards or other lottery devices, which are to be or may be used in selling or distributing such merchandise to the public; supplying, etc., others with push or pull cards, etc., as above set forth, either with any merchandise, or separately, which push or pull cards, etc., are to be or may be used in selling or distributing such merchandise to the public; or selling, etc., any merchandise by the use of push cards, pull cards, punch boards, or other lottery devices; and (2) requiring respondents, petitioners herein, to cease and desist from said practices, etc., as in decree in detail below set forth.

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. W. 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.

Before SPARKS, KERNER, and MINTON, Circuit Judges.

¹ Opinion and decision of the Court in said matter, in which it also denied petition for rehearing on July 16, 1942, are reported in 129 F. (2d) 64, 34 F. T. C. 1863.

Following entry of decree, as above set forth, and motion by petitioners for a stay of decree, and objection by the Commission to the entry of petitioners' proposed order staying the decree, in that the proposed order did not also contain a proviso to the effect that the stay order should become null and void, without further order of the Court, if, after the filing of petitioners' petition for certiorari, said petition should be denied by the Supreme Court, the Court on August 7, 1942, entered an order staying all of said decree after the first two paragraphs thereof, i. e., the preliminary and the affirming paragraph—

"until the further order of this Court; provided, however, that if petitioners do not timely seek review of said decree and the judgment of this Court herein by filing a petition for certiorari in the Supreme Court of the United States, this stay order, upon the expiration of the time within which such review upon certiorari may be sought, shall become null and void without further order of this Court; and provided further, that if the Supreme Court of the United States shall deny petitioners' petition for certiorari, this stay order, upon said denial, shall become null and void without further order of this Court."

Subsequently, the Supreme Court, on November 23, 1942, denied said petition for certiorari, and on December 14, 1942, denied petition for rehearing in the matter, leaving in full force and effect Court's decree as above set out, and Commission's cease and desist order as thereby affirmed.

DECREE

The petitioners herein, having filed with this Court on October 16, 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 August 21, 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 June 9, 1942, having rendered its decision affirming said order and commanding the petitioners to comply therewith—

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 August 21, 1941, be, and the same hereby is, affirmed.

And it is hereby further ordered, adjudged and decreed, That the petitioners Philip Harry Koolish and Sara Allen Koolish, individually, and trading as Standard Distributing Company, or under any other name, jointly or severally, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from directly or indirectly:

(1) Supplying to or placing in the hands of others any merchandise, together with push or pull cards, punch boards, or any other lottery devices, which said push or pull cards, punch boards, or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public;

(2) Supplying to or placing in the hands of others push or pull cards; punch boards, or other lottery devices, either with any merchandise or separately, which push or pull cards, punch boards, or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public;

(3) Selling or otherwise disposing of any merchandise by the use of push cards, pull cards, punch boards, or other lottery devices.

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 therewith.

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.

JOHN J. FULTON CO. v. FEDERAL TRADE COMMISSION¹

No. 9870—F. T. C. Doc. 3819

(Circuit Court of Appeals, Ninth Circuit. July 21, 1942)

EVIDENCE—EXPERT TESTIMONY—MEDICINAL PREPARATIONS—THERAPEUTIC VALUE— IF TESTIMONY NOT BASED ON PERSONAL EXPERIENCE WITH COMPOUND.

In proceeding before Federal Trade Commission to prevent false advertising of a compound of herbs as treatment for diabetes, witnesses qualified as experts by their general medical and pharmacological knowledge in the field were competent to testify that the compound was devoid of therapeutic value in the treatment of diabetes, notwithstanding they had had no personal experience with the compound in the treatment of the disease.

EVIDENCE—EXPERT TESTIMONY—MEDICINAL PREPARATIONS—THERAPEUTIC VALUE— IF TESTIMONY NOT BASED ON PERSONAL EXPERIENCE WITH COMPOUND—WHERE TESTIMONY ALSO OF MEDICAL WITNESSES IN PARTICULAR CASES.

In proceeding before Federal Trade Commission to prevent false advertising of compound of herbs as treatment for diabetes, commission was entitled to accept testimony of expert witnesses that compound was devoid of therapeutic value in treatment of disease, rather than testimony of medical witnesses as to the efficacy of compound in particular cases in their own practice, in none of which cases was it shown that the compound was administered under proper scientific controls.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—MISREPRESENTATION— ADVERTISING FALSELY OR MISLEADINGLY—MEDICINAL PREPARATIONS—THERA- PEUTIC VALUE—DIABETIC PREPARATION.

Federal Trade Commission's order that company desist from advertising Uvursin as effective treatment for diabetes was warranted by findings supported by the evidence that the advertised compound of herbs had the illusory effect of relieving the disease, in that it increased the flow of urine, thereby diluting its sugar content, whereas in fact the compound without diet was devoid of therapeutic value in the treatment of the disease.

(The syllabus, with substituted captions, is taken from 130 F. (2d) 85)

¹ Reported in 130 F. (2d) 85. For case before Commission, see 33 F. T. C. 218. Petition for certiorari denied by Supreme Court on November 9, 1942.

On petition to review order of Commission, order affirmed.

Mr. Zach Lamar Cobb, of Los Angeles, Cal., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, asst. chief counsel, *Mr. William L. Pencke*, *Mr. Donovan R. Divet*, *Mr. James W. Nichol*, and *Mr. R. R. MacIver*, special attorneys, Federal Trade Commission, all of Washington, D. C., for Commission.

Before MATHEWS, STEPHENS, and HEALY, Circuit Judges.

HEALY, *Circuit Judge*:

In a proceeding before the Federal Trade Commission, here under review, petitioner was ordered to desist from advertising its product, Uvursin, as an effective treatment for diabetes.

Petitioner advertised the preparation in medical journals and in circulars distributed [86] to the profession. Typical representations determined by the Commission to be false were that Uvursin "is a mild and innocuous oral treatment for diabetes mellitus"; that it is an efficacious treatment; that diabetic gangrene "yields to Uvursin"; and that the product "is being recognized as the preferred treatment in diabetes mellitus." In conjunction with the drug a rigid diet was recommended.

Diabetes results from a decrease in the internal secretion of the pancreas, manifesting itself by an abnormal elevation of the blood sugar, and also by the appearance of sugar in the urine. The modern and accepted way of controlling the disease is by diet and the hypodermic injection of insulin adjusted to meet the needs of each patient. The Commission found that petitioner's preparation is largely a compound of herbs long enjoying a reputation, particularly in folklore medicine, for the treatment of urinary conditions. Some of the herbs were anciently prescribed for use in the form of tea for the alleviation of bladder and kidney diseases. In diabetic cases the effect of these drugs is illusory. By increasing the flow of the urine, they dilute its sugar content, while the actual condition of the patient remains as before. Uvursin, without diet, was found to be devoid of therapeutic value in the treatment of the malady.

The findings have support in the testimony of expert witnesses called by the Commission. But the petitioner argues that since none of the experts had prescribed Uvursin, or observed its effects in concrete cases, their testimony was incompetent and inadmissible. We think otherwise. The witnesses were shown to possess wide knowledge in the field under inquiry. There is no good reason to suppose them incompetent to express an opinion as to the lack of therapeutic value of petitioner's preparation merely because they had had no personal experience with it in the treatment of the dis-

ease. Their general medical and pharmacological knowledge qualified them to testify. *Justin Haynes & Co. v. Federal Trade Commission*, 2 Cir., 105 F. (2d) 988, 989 [29 F. T. C. 1578], cert. den., 308 U. S. 616; *Neff v. Federal Trade Commission*, 4 Cir., 117 F. (2d) 495, 496-497 [32 F. T. C. 1842]; *Goodwin v. United States*, 6 Cir., 2 F. (2d) 200, 201; *Dr. W. B. Caldwell Inc. v. Federal Trade Commission*, 7 Cir., 111 F. (2d) 889, 891 [30 F. T. C. 1670]. Several medical witnesses called by petitioner testified to the efficacy of Uvursin in particular cases in their own practice; but since none of them was shown to have administered the drug under proper scientific controls, the Commission was of the belief that their evidence had little probative value as compared to expert testimony based on general knowledge. It was thought—and there is much evidence to justify the finding—that in diabetic cases there may be spontaneous or temporary remissions, depending in part on the character of the diet. The Commission was clearly entitled to accept the testimony of experts in the general field. *Justin Haynes & Co. v. Federal Trade Commission*, *supra*; cf. *Alberty v. Federal Trade Commission*, 9 Cir., 118 F. (2d) 669, 670 [32 F. T. C. 1871], cert. den., 314 U. S. 630.

Prior to the hearing, a witness for the Commission had obtained Uvursin in the thought of making a controlled test on diabetic patients in the Los Angeles County Hospital, but after consultation with a colleague, he abandoned the idea, because of his fear that the preparation might contain synthalin, which is a liver poison; and the witness was reluctant to expose his patients to the risk. The witness testified that some oral patent nostrums for the control of diabetes have contained the substance, although it was not mentioned in the advertising matter, and that it is very difficult to show the presence of synthalin by chemical methods. Petitioner intimates that the decision adverse to the making of the experiment was in some way induced or inspired by the Commission; but there is nothing whatever in the record to support the argument. It goes without saying that the petitioner was itself at liberty to have clinical tests of this character conducted, and to present the results to the Commission, if it saw fit.

It is urged that the Commission's order tends to promote monopoly, and is against the public interest; and that "medicine which can bring bona fide relief to the afflicted" ought to be encouraged, rather than the reverse. But a study of the record dissipates any feeling of apprehension that the public will suffer injury from the action taken here.

Affirmed.

ALBERT LANE v. FEDERAL TRADE COMMISSION¹

No. 9845—F. T. C. Dock. 3718

(Circuit Court of Appeals, Ninth Circuit. Aug. 20, 1942)

FINDINGS OF COMMISSION—WHERE SUPPORTED BY EVIDENCE.

Federal Trade Commission's findings supported by evidence are conclusive. Federal Trade Commission Act, Sec. 5 (c), 15 U. S. C. A. Sec. 45 (c).

CEASE AND DESIST ORDERS—JURISDICTION—PARTIES—NONPROFIT TRUST—NATIONALITY.

Whether a nonprofit trust would be subject to jurisdiction of Federal Trade Commission was immaterial upon review of cease and desist order directed to an individual, no attempt having been made to exercise jurisdiction over any trust.

CEASE AND DESIST ORDERS—JURISDICTION—SUBJECT MATTER—COMPETITION—WHEELER-LEA AMENDMENT.

Record did not sustain contention that Federal Trade Commission lacked jurisdiction because there was no competition where person against whom cease and desist order was directed had competitors and used unfair methods of competition in commerce both before and after enactment of the Wheeler-Lea amendment to Federal Trade Commission Act.

PLEADINGS AND PRACTICE—HEARINGS—DUE PROCESS—EVIDENCE—CROSS-EXAMINATION—WHETHER REFUSAL OF RIGHT OF.

Record failed to sustain contention that Federal Trade Commission had denied petitioner the fair hearing required by "due process of law" in that petitioner was not permitted to cross-examine certain witnesses who testified as witnesses for both the commission and petitioner, where it appeared petitioner cross-examined one such witness and was given an opportunity to cross-examine the other, but refused to do so.

PLEADING AND PRACTICE—HEARINGS—DUE PROCESS—EVIDENCE—EXHIBITS—WHETHER COMPETENT UNDER SECTION 4.

Objection to introduction of an exhibit in hearing before Federal Trade Commis[sion's] trial examiner on the ground that defendant was exempt under section 4 of the Federal Trade Commission Act was properly overruled, where there was no such exemption.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—BUSINESS STATUS, ADVANTAGES OR CONNECTIONS—COMMERCIAL ENTERPRISE AS NONPROFIT ORGANIZATION—"CONSUMERS' BUREAU OF STANDARDS."

Federal Trade Commission's findings that "Consumers Bureau of Standards" was merely a name under which defendant conducted his business and that defendant had represented that such bureau was a national nonprofit consumers' research and educational organization amounted to finding that

¹ Reported in 130 F. (2d) 48. For case before Commission, see 32 F. T. C. 1330. Rehearing denied September 14, 1942.

defendant represented that his business was operated on a nonprofit basis warranting order that he cease and desist from such representation.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION AND OPPRESSION—BUSINESS STATUS, ADVANTAGES OR CONNECTIONS, AND THREATENING AND COERCING.

Where Federal Trade Commission found that all representations and threats mentioned in cease and desist order had been made by defendant directly or by implication in the conduct of his business, that such representations were false, that competitors were injured thereby and by the threats, and that representations and threats constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, cease and desist order was supported by the findings.

CEASE AND DESIST ORDERS—EXTENT—MISREPRESENTATION AND OPPRESSION—BUSINESS STATUS, ADVANTAGES OR CONNECTIONS, AND THREATENING AND COERCING—CONSUMER "APPRAISAL" SERVICES AND PUBLICATIONS—SALE, ETC., OF "ANY" BOOK, ETC.

Order that individual cease and desist from making specified representations and threats in connection with the sale or distribution in commerce of "any" book, magazine, etc., or "any" other written matter which gives or purports to give appraisals or classifications of merchandise, goods, or services, was not erroneous as being so broad as to prohibit the doing of any business at all, but merely prohibited the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce.

CEASE AND DESIST ORDERS—EXTENT—MISREPRESENTATION AND OPPRESSION—BUSINESS STATUS, ADVANTAGES OR CONNECTIONS, AND THREATENING AND COERCING—CONSUMER "APPRAISAL" SERVICES AND PUBLICATIONS—SALE, ETC., OF "ANY" BOOK, ETC.—WHERE NO BOOK, ETC., NOT WITHIN BAN, PRESUMPTIVELY EVER SOLD BY DEFENDANT.

Where there was no evidence that individual ordered to cease and desist from making enumerated representations and threats in connection with sale or distribution of any book, magazine, etc., purporting to give appraisals or classifications of merchandise, goods, or services had ever sold or distributed any publication as to which such representations could be truthfully made, appellate court was not required to assume that individual would do so thereafter or to modify cease and desist order in accordance with such assumption.

(The syllabus, with substituted captions, is taken from 130 F.

(2d) 48)

On petition to review order of Commission, order affirmed.

Mr. Robert H. Hosick, of Los Angeles, Cal., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, asst. chief counsel, *Mr. Fletcher G. Cohn*, *Mr. James W. Nichol*, and *Mr. J. B. Truly*, special attorneys, Federal Trade Commission, all of Washington, D. C., for Commission.

Before GARRECHT, MATHEWS, and STEPHENS, Circuit Judges.

MATHEWS, *Circuit Judge*:

Here for review is an order of the Federal Trade Commission "that [petitioner], trading or doing business as Consumers Bureau of Standards or Consumers Bureau, 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 in commerce, as 'commerce' is defined in the Federal Trade [50] Commission Act [15 U. S. C. A. §§ 41-58],¹ of any book, magazine, periodical, circular letter, or any other printed or written matter which gives or purports to give appraisals or classifications of merchandise, goods, or services, do forthwith cease and desist, directly or by implication, from:

"(1) Representing in any manner, or using any trade or other name which imports or implies, that such publication is compiled, issued, sold, or offered for sale by or under the direction of any bureau, institute, or organization engaged in research work for the benefit of consumers, or devoted to aiding consumers in making wise or economical purchases, or which by means of any scientific or adequate tests of any nature designates the comparative consumer value of any merchandise, goods, or services;

"(2) Representing that any such publication is or will be issued, printed, or distributed at any stated time or times other than those at which it is actually issued, printed, or distributed;

"(3) Representing that [petitioner's] business is operated on a non-profit basis;

"(4) Representing that [petitioner's] business is national in scope, or representing in any manner that such business is greater in size or scope than is the fact;

"(5) Representing that [petitioner] is, or represents, any consumers' research group or movement;

"(6) Representing that [petitioner] has any arrangement with the Mellon Institute of Industrial Research, Massachusetts Institute of Technology, or any similar organizations or institutions, for the submission thereto for determination of any questions concerning the value or comparative value of merchandise, goods, or services;

"(7) Representing that [petitioner] personally is qualified by any special training, education, or experience to determine, or has any employees, staff, equipment, or facilities for determining, by any scientific method or adequate investigation or tests, the value or comparative value of any merchandise, goods, or services;

¹ Section 4 of the Act, 15 U. S. C. A. § 44, defines "commerce" as "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

"(8) Threatening, inferring, or implying to any manufacturer or distributor of merchandise, goods, or services that a refusal to buy copies of or contribute financially to such publication or directly or indirectly to [petitioner], will or may result in unfavorable, disparaging, or derogatory listing of, or reference to, such manufacturer or distributor or his merchandise, goods, or services in or in connection with said publication."

Thirty-eight points are urged by petitioner. Twenty-nine (points 6, 9-34, 36 and 37) are that the Commission erred in its findings. These points have no merit. The findings are supported by evidence and hence are conclusive. Federal Trade Commission Act, § 5 (c), 15 U. S. C. A. § 45 (c).

There remain for consideration points 1-5, 7, 8, 35, and 38. Point 1 is that "The Commission had no jurisdiction over this case for the reason that the Consumers Bureau of Standards organization was a non-profit trust." This was not a proceeding against "the Consumers Bureau of Standards organization." It was a proceeding against petitioner. The Commission found:

"[Petitioner] is an individual who, under the trade names of Consumers Bureau of Standards and Consumers Bureau, has been, and is, engaged in the business of selling and distributing in commerce between and among the various States of the United States and in the District of Columbia certain publications, purporting to list and grade consumers' merchandise, goods, and services sold and distributed throughout the United States. * * * There was, and is, no such organization as Consumers Bureau of Standards or Consumers Bureau. As hereinabove stated, these are merely trade names under which [petitioner] conducted his said business."

These findings are supported by evidence and hence are conclusive. The Commission did not attempt in this case to exercise jurisdiction over any trust—"non-profit" or otherwise. We therefore have no occasion to decide whether or not "non-profit" trusts are subject to its jurisdiction.

Point 2 is that, "As to acts committed before the Wheeler-Lea Amendment,² the Federal Trade Commission has no ju[51]risdiction where there is no competition." This proposition has no relevancy here; for petitioner had competitors and used unfair methods of com-

² Meaning, evidently, § 3 of the Wheeler-Lea Act of March 21, 1938, c. 49, 52 Stat. 111, amending § 5 (a) of the Federal Trade Commission Act, 15 U. S. C. A. § 45 (a). Before the amendment, § 5 (a) empowered and directed the Commission to prevent persons, partnerships, and corporations "from using unfair methods of competition in commerce," 38 Stat. 719. As amended, § 5 (a) empowers and directs the Commission to prevent persons, partnerships and corporations "from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." 52 Stat. 111.

petition in commerce both before and after the so-called Wheeler-Lea Amendment.

Point 3 is that "There is no evidence of unfair or deceptive acts or practices occurring subsequent to March 21, 1938." Actually, the record is replete with such evidence.

Point 4 is that "The Commission erred in denying fairness of hearing required by due process of law." Specifically, petitioner claims that the hearing was unfair in that he was not permitted to cross-examine William P. Collis and Ralph B. Sharbrough. Collis and Sharbrough were witnesses both for the Commission and for petitioner. Collis testified as a witness for the Commission on June 14, 1939, October 13, 1939, and March 7, 1940, and as a witness for petitioner on December 4, 1939. Petitioner examined Collis on December 4, 1939, and was given full opportunity to cross-examine him on March 7, 1940, but refused to do so. Sharbrough testified as a witness for the Commission on June 14, 1939, October 13, 1939, and March 6, 1940, and as a witness for petitioner on December 5, 1939. Petitioner examined Sharbrough on December 5, 1939, and cross-examined him on March 6, 1940. The claim that petitioner was denied a fair hearing is baseless and unwarranted.

Points 5, 7 and 8 are that the Commission's trial examiner erred in admitting evidence. Point 7 relates to oral testimony, points 5 and 8 to documentary evidence, namely, the Commission's exhibits 2, 6, 8, 9, 16, 19, 21, 22, 24, 25, 31-34, 42 and 43. The testimony and all the exhibits except exhibit 9 were received without objection. Petitioner's objection to exhibit 9 was, "I object on the grounds we are exempt under § 4 of the Act"—meaning, obviously, that petitioner was exempt from the provisions of the Federal Trade Commission Act. There was and is no such exemption. The objection was properly overruled.

Point 35 is that "The order is excessive where it covers matters not included in the findings." Specifically, petitioner complains of that part of the order which requires him to cease and desist from representing that his business is operated on a nonprofit basis. Petitioner's brief states that "The Commission did not make any finding as to representations of being nonprofit." The statement is untrue. The Commission found that petitioner made the following representation:

"Consumers Bureau of Standards is a national nonprofit consumers' research and educational organization which investigates, tests and reports on goods and services for the benefit of the ultimate consumer."

Since, as the Commission found, "Consumers Bureau of Standards" was merely a name under which petitioner conducted his business, the Commission's finding that petitioner made the above quoted repre-

sentation was, in effect, a finding that petitioner represented that his business was operated on a nonprofit basis.

All representations and threats mentioned in the order were found by the Commission to have been made by petitioner, directly or by implication, in the course and conduct of his aforesaid business. The Commission further found that the representations were false and deceptive; that petitioner's competitors were injured by the representations and by the threats; and that the representations and threats constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce. Thus the order is, in all respects, supported by the findings.

Point 33 is that the order is "so drastic in its provisions that it prohibits petitioner from doing any business at all." The order does not prohibit petitioner from doing any lawful business in any lawful manner. It merely requires him to cease and desist from using unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce. Specifically, it requires him to cease and desist from, directly or by implication, making the representations and threats mentioned in the or[52]der—

"in connection with the offering for sale, sale, or distribution in commerce * * * of *any* book, magazine, periodical, circular letter, or *any* other printed or written matter which gives or purports to give appraisals or classifications of merchandise, goods, or services." (Emphasis supplied).

Petitioner contends that the word "any" in the above quoted phrase makes the order too broad. We do not think so. The representations mentioned in the order were false and deceptive when made in connection with the sale and distribution of the publications heretofore sold and distributed by petitioner. The record does not show that petitioner has ever sold or distributed any publication as to which these representations could be truthfully made. We are not required to assume that he will do so hereafter or to modify the order in accordance with that assumption. *Century Metalcraft Corp. v. Federal Trade Commission*, 7 Cir., 112 F. (2d) 443, 446 [30 F. T. C. 1676]; *Macher v. Federal Trade Commission*, 2 Cir., 126 F. (2d) 420 [34 F. T. C. 1835].

Order affirmed.

GENERAL MOTORS CORPORATION AND GENERAL
MOTORS SALES CORPORATION v. FEDERAL TRADE
COMMISSION¹

No. 9159—F. T. C. Dock. 3152

(Circuit Court of Appeals, Sixth Circuit. Aug. 23, 1942)

Order dismissing, pursuant to petitioners' withdrawal, petition for review of order of Commission in Docket 3152, Nov. 12, 1941, requiring respondents, their officers, etc., in connection with offer, etc., in commerce, of automobile accessories, automobile supplies, and other similar products, to cease and desist from certain coercive and tying acts and practices as therein set forth, in violation of Sec. 5 of the Federal Trade Commission Act and Sec. 3 of the Clayton Act.

Mr. John Thomas Smith (with *Mr. Albert M. Lever* of counsel), of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, and *Mr. Everett F. Haycraft*, special attorney, Federal Trade Commission, both of Washington, D. C., for the Commission.

Before *HICKS*, *HAMILTON*, and *McALLISTER*, Circuit Judges.

ORDER

Petitioners herein having filed a withdrawal of the petition for review, it is now ordered that the petition for review of the order of the Federal Trade Commission, dated November 12th, 1941, be and the same is hereby allowed to be withdrawn.²

BOULEVARD CANDY COMPANY v. FEDERAL TRADE
COMMISSION³

No. 7967—F. T. C. Dock. 3396

(Circuit Court of Appeals, Seventh Circuit. Sept. 10, 1942)

Order dismissing, for failure to prosecute, on motion of counsel for respondent, not objected to by counsel for petitioner, petition for review of order of Commission in Docket 3396, 34 F. T. C. 536, requiring said petitioner, respondent therein, its officers, etc., in connection with the offer, etc., in commerce,

¹ Not reported in Federal Reporter. The Commission's decision, including the order to cease and desist as modified as of June 25, 1942, is reported in 34 F. T. C. 58.

² Petitioners' withdrawal was "without prejudice, however, to any of the rights of the said General Motors Corporation and General Motors Sales Corporation, or either of them, in respect of a modified order of the Federal Trade Commission heretofore and on June 25, 1942 made by it modifying its aforesaid order dated Nov. 12, 1941."

³ Not reported in Federal Reporter. For case before Commission, see 34 F. T. C. 536.

of candy, to cease and desist from selling, etc., candy or any other merchandise so packed, etc., that sales thereof to the public are to be made or may be made by means of a game of chance, etc., or supplying others with push or pull cards, etc., either with said assortments or separately, which said push or pull cards, etc., are to be or may be used in selling, etc., said candy or other merchandise to the public, or selling, etc., any merchandise by means of a game of chance, etc., as in detail in order set forth.

Pennish and Rashbaum, of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, asst. chief counsel, and *Mr. James W. Nichol*, special attorney, Federal Trade Commission, all of Washington, D. C., for the Commission.

Before EVANS and KERNER, Circuit Judges.

ORDER

On motion of counsel for respondent, not objected to by counsel for petitioner, it is ordered by the Court that this petition for review of an order of the Federal Trade Commission be, and it hereby is, dismissed, for failure to prosecute.

CLARA STANTON, DRUGGIST TO WOMEN v. FEDERAL TRADE COMMISSION¹

No. 2487—F. T. C. Dock. 4327.

(Circuit Court of Appeals, Tenth Circuit. Oct. 16, 1942)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—MEDICINAL PREPARATIONS—"ANTI-FAT TABLETS."

The Federal Trade Commission's order to cease and desist from disseminating advertisements, representing that certain preparation was a cure or remedy for obesity or using name "Anti-Fat Tablets," held proper as against contentions that order was based on erroneous finding that preparation contained calcium carbide, instead of calcium carbonate, and that commission and its experts were unfamiliar with "iodine (Keysall)," listed in formula as one ingredient of preparation.

(The syllabus, with substituted caption, is taken from 131 F. (2d) 105)

On petition to review order of Commission, enforcement of order directed.

Clara Stanton pro se.

Mr. Joseph J. Smith, Jr., asst. chief counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, *Mr. J. B.*

¹ Reported in 131 F. (2d) 105. For case before Commission, see 34 F. T. C. 153.

Truly, Mr. Carrel F. Rhodes, Mr. Maurice C. Pearce, and Mr. James W. Nichol, Attys. for Commission, all of Washington, D. C., on the brief), for Commission.

[106] Before PHILLIPS, BRATTON, and HUXMAN, Circuit Judges.

HUXMAN, *Circuit Judge*:

By this appeal petitioner challenges a cease and desist order issued by the Federal Trade Commission, directing her to cease and desist from disseminating any advertisement by use of the United States mails or by means in commerce representing that petitioner's preparation was a cure or remedy for obesity or that it had any therapeutic value in the treatment of obesity, or from disseminating any advertisement that uses the name "Anti-Fat Tablets." The appeal challenges the sufficiency of the findings to sustain the order.

Petitioner placed her formula in evidence. It consists of the following ingredients:

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.

The Commission's original findings gave her formula as consisting of the following:

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 Carbide	-----	1/8 gr.
Sugar Milk qs	-----	3 gr.

The contention made is that the order directing her to cease and desist is based on the finding that her remedy contained as an ingredient calcium carbide, whereas admittedly it contained no such ingredient.

One of the constituent elements of petitioner's remedy was calcium carbonate. Throughout the hearing the attorney for the Commission referred to this element as calcium carbide. One of the medical experts of the Commission, Dr. Rees, used the term calcium carbide. He testified that calcium carbide is a reducing acid, but that the amount in the formula was inert and would have no effect. Calcium carbide is a crystalline solid made by heating lime and carbon together in an electric furnace. It is quite obvious that while the doctor used the

term "calcium carbide," he must have had in mind and was testifying concerning calcium carbonate. That the term "calcium carbide" was inadvertently used when calcium carbonate was in the minds of the witnesses and the Commission is evidenced by the testimony of Dr. Kemper when he testified: "Calcium carbide—no, calcium carbonate—is an astringent." Dr. Connor testified concerning the effect of calcium carbonate. From this it appears that the Commission had before it the testimony concerning the effect of calcium carbonate, an ingredient in petitioner's formula, and that it inadvertently used the term "calcium carbide" in its original findings upon which the order was based. When the typographical error thereafter was called to its attention, it properly corrected the error by a nunc pro tunc order making its finding conform to the undisputed testimony in the case.

It is also urged that the Commission's experts testified that they were not familiar with Iodine (Keysall), one of the ingredients of petitioner's preparation. Dr. Rees did testify that he did not know what Keysall was unless it was a preparation similar to Lugol's solution of iodine. Keysall is a trade name of an iodine solution and is substantially the same as Lugol's solution of iodine. This was understood by the witnesses and the Commission. The testimony is uncontradicted that the amount of iodine in petitioner's preparation did not constitute an active dose and had no therapeutic value.

The evidence fully supports the finding of the Commission, and the order will therefore be enforced.

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE
COMMISSION, COMPLAINANT-APPELLEE

IN THE MATTER OF

PERCE P. GREEN AND HOWARD RAND, INDIVIDUALS
TRADING AS GREEN SUPPLY COMPANY, NATIONAL
MERCHANDISING COMPANY, AND NATIONAL SUPPLY
COMPANY, RESPONDENTS-APPELLANTS

Civil Action, File No. 722—F. T. C. Dock. 4480

(District Court for the District of Minnesota, Fourth Division.
Nov. 6, 1942)

Decision and decree granting, as below set forth, motion of Commission to dismiss, for lack of jurisdiction, action, initiated by way of notice of appeal and petition to review proceedings, findings, conclusions, and order in Docket 4480, in which said order on May 5, 1942, 34 F. T. C. 1139 at 1146 required respondents, in connection with offer, etc., in commerce, of fishing

tackle, silverware, rifles, garments, blankets, radios, or any other merchandise, to cease and desist from selling, etc., any merchandise so packed, etc., that sales thereof to the public were to be or might be made by means of a game of chance, etc.; supplying, etc., others with push or pull cards, pull tabs, etc., either with assortments of merchandise or separately, which said push or pull cards or lottery devices were to be or might be used in selling or distributing said merchandise to the public; or selling, etc., any merchandise by means of a game of chance, gift enterprise or lottery scheme.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Joseph J. Smith, Jr.*, asst. chief counsel, both of Washington, D. C., for complainant-appellee.

Mr. Irving Marell, of St. Paul, Minn., for respondents-appellants.

Before NORDBYE, Judge.

CONCLUSIONS OF LAW UPON MOTION TO DISMISS ACTION

The Court is of the opinion that:

1. The Federal Trade Commission Act, Sec. 5 (c), (d) (52 Stat. 112-113; 15 U. S. C. A. Sec. 45 (c), (d)) confers upon an appropriate United States Circuit Court of Appeals exclusive jurisdiction to review orders to cease and desist issued thereunder by the Federal Trade Commission, the so-called complainant-appellee in this proceeding, and this Court has no jurisdiction to review any such order. See *T. C. Hurst & Son v. Federal Trade Commission*, 268 Fed. 874, 877-878 (E. D. Va., 1920) [3 F. T. C. 565]; *Macfadden Publications v. Federal Trade Commission*, 37 F. (2d) 822 (App. D. C. 1930) [13 F. T. C. 605]; *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 48-50 (1938); *Securities and Exchange Commission v. Andrews*, 88 F. (2d) 441 (C. C. A. 2nd, 1937); *Okin v. Securities and Exchange Commission*, 46 F. Supp. 481 (S. D. N. Y., 1942); *Guaranty Underwriters v. Johnson* — F. Supp. — (S. D. Fla., September 4, 1942).

2. This Court therefore has no jurisdiction over the subject matter of this action and has no power to grant the relief, or any part thereof, sought by the so-called respondents-appellants herein.

DECREE DISMISSING ACTION

This cause coming on this day to be heard upon motion of the Federal Trade Commission, the so-called complainant-appellee herein, to dismiss this action, due notice of which said motion was served upon counsel for the so-called respondents-appellants by first-class, registered mail on October 16, 1942, and the Court having fully heard and considered said motion and being of the opinion that it is with-

out jurisdiction to entertain this action for the reasons set forth in its conclusions of law separately stated and filed herewith:

It is therefore ordered, adjudged and decreed that the said motion of the Federal Trade Commission be, and the same hereby is, granted, and that this action be, and hereby is, dismissed, with costs to be borne by Perce P. Green and Howard Rand, the so-called respondents-appellants herein.¹

SIGNODE STEEL STRAPPING CO. v. FEDERAL TRADE COMMISSION²

No. 4896—F. T. C. Dock. 3688

(Circuit Court of Appeals, Fourth Circuit. Nov. 20, 1942)

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SECTION 3—"LINE OF COMMERCE"—COMPETITIVE EFFECTS—TYING MACHINE INDUSTRY—LESSOR'S WIRE AND STRAPPING CONDITION.

Federal Trade Commission's findings that tying machine industry constitutes a field distinct from general tying field and is a line of commerce within meaning of Clayton Act, and that lease provisions requiring lessees of tying machines to use only strapping and wire supplied by lessor substantially lessened competition in such line of commerce, were findings as to the effect on competition in that line of commerce consisting in the sale of wire and strapping for binding packages rather than sale or lease of tying machines. Clayton Act, Sec. 3, 15 U. S. C. A., Sec. 14.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SECTION 3—COMPETITIVE EFFECTS—TYING MACHINE INDUSTRY—LESSOR'S WIRE AND STRAPPING CONDITION.

Lease provisions requiring lessees of tying machines to use therein only wire and strapping supplied by lessor in effect precluded lessees from using the wire or strapping of lessor's competitors and tended to hamper competition in the sale of such products and to create monopolies in violation of Clayton Act.

¹ Notice of Appeal, addressed to "the above-named complainant, the Federal Trade Commission and their Attorneys" stated that such appeal was taken "upon the grounds and for the reason that the Findings are incomplete and perverse, not sustained nor justified by the evidence, and contrary to law; that the Conclusions and Order based upon the aforesaid Findings and herein referred to were and are not justified by the evidence and were and are contrary to law; that said appeal is taken in accordance with the provisions of Section 5, Paragraph C of the Federal Trade Commission Act of 1914 and amendments thereto."

Accompanying "petition" sets forth, among other things, respondents' appeal to the Court "for a review of said order as provided by Section 5, Paragraph (c) of the Federal Trade Commission Act, as amended" upon grounds set forth in said Notice of Appeal.

Commission's Motion to Dismiss, setting forth that so-called respondents-appellants were seeking to obtain a review by the District Court herein of cease and desist order issued against them under the Federal Trade Commission Act, set forth provisions of said Act in Section 5 (c) providing for such a review by the Circuit Courts of Appeals and provision of Section 5 (d) making the jurisdiction of said courts to affirm, enforce, modify or set aside orders of the Commission exclusive.

² Reported in 132 F. (2d) 48. For case before Commission, see 33 F. T. C. 1049.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SECTION 3—COMPETITIVE EFFECTS—WHERE EFFECT "MAY BE" TO SUBSTANTIALLY LESSEN COMPETITION OR TEND TO CREATE MONOPOLY.

Clayton Act provision prohibiting sales or agreements whose effect may be substantially to lessen competition or tend to create a monopoly does not, by the use of the word "may", prohibit the mere possibility of the consequences described, but was intended to prevent such agreements as under the circumstances defined probably would lessen competition or create an actual [49] tendency to monopoly.

FEDERAL TRADE COMMISSION—FUNCTION—COMPETITIVE BUSINESS—PROTECTION FROM FURTHER INROADS.

The function of Federal Trade Commission is to protect competitive business from further inroads by monopoly by means of supervisory action.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SECTION 3—TYING MACHINE INDUSTRY—LESSOR'S WIRE AND STRAPPING—IF LESSEE TIED TO USE OF—WHETHER TRADE SERVICE JUSTIFICATION OF CONDITION.

Lease provisions requiring lessees of tying machines to use therein only the strapping and wire supplied by lessor could not be justified as not constituting a violation of the Clayton Act on the ground that tying machines were leased to customers as a trade service for the purpose of facilitating the use of wire and strapping sold by lessor.

CLAYTON ACT—SCOPE—LEGITIMATE COMPETITION—PRESERVATION OF AS LIMITATION ALSO.

The Clayton Act was intended to preserve legitimate competition and may not be used to penalize efforts reasonably directed to safeguard against unfair competition.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SECTION 3—TYING MACHINE INDUSTRY—LESSOR'S WIRE AND STRAPPING—IF LESSEE TIED TO USE OF—WHETHER "SUBSTANTIAL LESSENING OF COMPETITION."

Evidence sustained Federal Trade Commission's finding that lease provisions requiring lessees of tying machines to use therein only wire and and strapping supplied by lessor whose annual sales of wire and strapping averaged more than \$2,000,000 and which with two other companies employing similar restrictive leases controlled from two-thirds to three-fourths of the business done by the tying machine industry, resulted in a "substantial lessening of competition" in violation of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SECTION 3—COMPETITIVE EFFECTS—WHERE EFFECT MAY BE "SUBSTANTIAL LESSENING OF COMPETITION"—BUSINESS CONTROLLED AND AFFECTED RATHER THAN PORTION OF NATIONAL VOLUME INVOLVED, AS CRITERION.

The provision that the lessening of competition prohibited by the Clayton Act must be a "substantial lessening of competition" does not mean that a dealer may restrain competition with respect to his customers if his portion of the national business is small, but the substantiality of the lessening of

competition should be judged with reference to effect of trade practice upon the volume of business controlled by dealer engaging in the practice, not with reference to the proportion which such business bears to the national volume of such business.

(The syllabus, with substituted captions, is taken from 132 F. (2d) 48)

On petition to review and set aside order of Commission, order enforced.

Mr. Adrien F. Busick, of Washington, D. C., and *Mr. Charles M. Price*, of Chicago, Ill. (*Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., and *Scott, MacLeish & Falk*, of Chicago, Ill., on the brief), for petitioner.

Mr. Joseph J. Smith, Jr., asst. chief counsel, Federal Trade Commission, of Washington, D. C., (*Mr. W. T. Kelley*, chief counsel, and *Mr. George W. Williams, Mr. J. B. Truly*, and *Mr. James W. Nichol*, sp. attys., Federal Trade Commission, all of Washington, D. C., on the brief), for Commission.

Before PARKER, SOPER, and NORTHCUTT, Circuit Judges.

PARKER, *Circuit Judge*:

This is a petition to set aside an order of the Federal Trade Commission directing the Signode Steel Strapping Company to cease and desist from incorporating in any contract for the lease or sale of its machinery, tools or appliances, or enforcing or continuing in operation or effect, any condition, agreement, or understanding to the effect that the lessee or purchaser thereof shall not use with same any wire or strapping not acquired from the company. The Commission has filed answer asking the en[50]forcement of the order. Similar orders were made by the Commission against the Acme Steel Company and the Gerrard Company, which together with the Signode Company control from two thirds to three fourths of the type of tool leasing business in which the Signode Company is engaged; but these orders are not before the court in this proceeding.

The Signode Company's principal business is the sale of steel strapping and wire suitable for use in making packages or shipping units. Its sales of these commodities in the years 1936, 1937, and 1938 amounted to \$2,197,346.95, \$2,623,271.24, and \$1,759,085.42, respectively. It is also engaged in renting to its customers machines, tools and appliances for stretching and fastening this strapping and wire in the making of the packages or shipping units. For the smaller tools it requires a deposit of \$25.00 per tool, which is refunded when the tool is returned, less 10% for each quarterly period that the tool is used. For the larger tools and appliances it collects an annual service charge of from \$5.00 to \$50.00. Automatic electric wire tying machines are

leased at from \$100.00 to \$1,500.00 per year. Its income from the rentals of these machines, tools, and appliances, other than wire tying mediums, for the years 1936, 1937, and 1938 was \$63,862.02, \$94,672.22, and \$86,640.01, respectively; and its income for the same years from rentals and deposits on automatic wire tying machines was \$25,235.00, \$87,575.00, and \$55,300.00, respectively. The lease agreements contain the condition or stipulation that the lessee will not use the machines, tools, or appliances leased except with strapping or wire acquired from the company.

It is not disputed that the company is engaged in interstate commerce. It is one of about one hundred companies selling wire and strapping for the purpose of making packages and does from 5% to 7% of the business in this field. It is one of twelve companies engaged in the sale or leasing of tying machines or appliances; and the gross volume of business done by these companies, including the sale of wire and strapping, amounts to approximately nine million dollars annually. Two-thirds to three-fourths of this business, however, as above indicated, is done by the company here and the Acme Steel Company and the Gerrard Company. The company does from twenty to thirty percent of the total volume of the business done by these twelve companies. The line of commerce here pertinent, however, as the Commission admits in its brief, is the sale of wire and strapping for the purposes of binding packages, and not the sale or leasing of tools or machines; for the lessening of competition complained of relates not to the sale or leasing of tools or machines, but to the sale of wire and strapping for use therein.

The Commission made the following findings with respect to the lessening of competition which results from the incorporation of the condition or stipulation with respect to the use of wire and strapping acquired from the company, viz:

"Paragraph three: There are in the United States other corporations, and individuals, firms, and partnerships, who have been and are engaged in the sale, in commerce among and between the various states of the United States and in the District of Columbia, of steel strapping and wire suitable for use in and with respondent's machines, appliances, and tools. But for the restrictive conditions in respondent's lease contracts, as hereinafter set forth, respondent would have been and would now be in active and substantial competition with such corporations, individuals, firms, and partnerships in the sale of steel strapping and wire to the lessees of respondent's machines, appliances, and tools.

"Paragraph nine: There is on the market an ample supply of steel strapping and wire suitable for use in or with respondent's machines and appliances, such strapping and wire being for sale both by con-

cerns which sell or lease tying machines and by concerns which do not sell or lease such machines. These concerns are prepared to and have attempted to sell such strapping and wire to lessees of respondent's machines and appliances, but have found themselves precluded from such sale by reason of the restrictive conditions in respondent's lease contracts.

"Paragraph ten: The commission finds that the practice of respondent in requiring that the lessee of its machines and appliances use in or with such machines and appliances no wire or strapping other than that supplied by respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tying wire and strapping from respondent's competitors. Competition in the tying wire and strapping market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its machines and appliances under agreements containing such restrictive conditions."

These findings are supported by paragraph one of part two of the stipulation of facts, which is as follows:

"Paragraph one: There are in the United States, and have been during the time respondent has been in business, a substantial number of other corporations, firms, partnerships, and individuals who have been and are engaged in the sale of steel strapping and wire in commerce among and between the several states and territories thereof and the District of Columbia, and who are unable to sell steel wire and strapping to lessees of respondent's tools, appliances, and machines in cases where respondent's lease limits the use of the tool, appliance, or machine to the strapping or wire of the respondent."

One of the contentions of the company before the Commission as well as here was that, since there were so many ways of preparing packages and since the use of wire and strapping with tools constituted so small a part of the general tying field, the practices of the company could have no substantial effect upon competition therein. The Commission rejected this contention, holding that the use of wire and strapping with tying machines constituted a distinct line of commerce within the meaning of the Clayton Act and that the effect of the restrictive conditions inserted by the company in its leases was "to substantially lessen" competition in that line of commerce. The pertinent paragraphs of the findings are as follows:

"Paragraph thirteen: The Commission is of the opinion from the evidence, and finds, that the tying-machine industry constitutes a field distinct from the general tying field, and that it is a line of commerce within the meaning of the Clayton Act.

"Paragraph fourteen: While the restrictive conditions in respondent's contracts do not expressly provide that the lessees of re-

respondent's machines, appliances, and tools shall not use the wire and strapping of respondent's competitors, the practical effect of such conditions is to preclude such lessees from using such wire and strapping. The Commission further finds that the effect of such restrictive conditions, under the circumstances set forth herein, has been, is, and may be, to substantially lessen competition in the aforesaid line of commerce. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the three leading companies in the tying-machine industry upon competition in said line of commerce."

The company argues that the findings last quoted relate to the sale or lease of machines, or at least to the sale of wire and strapping by companies that sell or lease machines, and not to the sale of wire and strapping suitable for use therein, and that consequently the Commission has failed to make the essential finding of substantiality in the lessening of competition in the line of commerce involved. The Commission in its brief says that it did not intend to make any such finding as suggested by the company, and agrees that the line of commerce involved is the sale of wire and strapping for making packages or shipping units. We think that this is the reasonable interpretation of the findings. The words "tying machine industry" were manifestly used for "machine tying industry," having reference to the use of machines with wire and strapping in the making of packages. Paragraphs eleven and twelve had dealt with the general tying field in which rope, twine, etc., were used; and the manifest purpose of paragraph thirteen was to distinguish from this general tying field the use of wire and strapping in connection with the use of tying machines. The words "tying machine industry," therefore, should be taken to refer to this, and not to the business of selling or leasing tying machines or to the sale of wire and strapping only by those engaged in selling or leasing such machines. The practices complained of could not have lessened competition in the sale or leasing of the machines; and if the meaning which the company seeks to give the findings last above quoted were the meaning intended, there would have been no reason for the Commission to make findings three, nine and ten quoted above, which relate to the effect of the restrictive conditions on competition in the sale of wire and strapping, the ninth finding referring expressly to sales by concerns which do not sell or lease machines.

The order of the Commission was entered under section 3 of the *Clayton Act*, 38 Stat. 731, 15 U. S. C. A. 14, which is as follows:

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise [52]; machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or

resale within the United States * * * on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

The contentions of the company are (1) that the restrictive conditions contained in its lease contracts do not fall within the prohibition of the act, and (2) that their effect is not "to substantially lessen competition" in a line of commerce within its meaning. Neither of these contentions, in our opinion, can be sustained.

The company's position on its first contention is that the restrictive conditions contained in its lease contracts do not forbid the use of wire and strapping supplied by its competitors and that the use of its machines, tools and appliances by customers to whom they are furnished is not a practical necessity, so as to justify a finding that the practical effect of the restrictive conditions is to preclude the use of wire and strapping supplied by its competitors. For this position it relies upon the fact that machines, tools and appliances are comparatively inexpensive and can be obtained by its customers from other dealers without difficulty and without great expense.

The answer to this position is that the users of appliances of this sort will not in most cases care to equip themselves with more appliances than are necessary for their purposes and, having obtained from the company those that are necessary, will not be willing to incur the additional expense of acquiring others to do the same work. Evidence is stipulated that approximately two thirds of the company's customers purchase annually from the company less than 600 pounds of wire and strapping and that the average billing to each such customer is approximately \$30.00 per year; and that approximately 95% of its customers purchase annually less than two tons with an average annual billing of approximately \$50.00. Certainly customers using quantities no greater than these would not feel justified in acquiring more than one set of tools and appliances; and the estimate in the stipulation is that only around 25% of the customers of the company have in their possession tools or appliances supplied by others. This means necessarily that most of those customers of the company who have leased its tools and appliances will, as a practical matter, be precluded from purchasing wire and strapping from other persons, since they cannot be used with the appliances leased from the company. Directly in point, we think, is the decision of the Supreme Court in *International Business Machines Corp. v. United States*, 298 U. S. 131, in which it was held a violation of section 3 of the *Clayton Act* for the lessor of ma-

chines to require that only cards of its manufacture be used therein. The court said: "Little need be said of the contention that the condition of appellant's leases does not infringe these prohibitions (of the Clayton Act). It is true that the condition is not in so many words against the use of the cards of a competitor, but is affirmative in form, that the lessee shall use only appellant's cards in the leased machines. But as the lessee can make no use of the cards except with the leased machines, and the specified use of appellant's cards precludes the use of the cards of any competitor, the condition operates in the manner forbidden by the statute. See *United Shoe Machinery Co. v. United States*, 258 U. S. 451, 457, 458."

In paragraph one of part two of the stipulation quoted above, evidence is stipulated to the effect that other dealers in wire and strapping are unable to make sales to lessees of the company's appliances who hold leases containing the restrictive conditions; and in the tenth paragraph of the Commission's findings is the finding that "competition in the tying wire and strapping market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its machines and appliances under agreements containing such restrictive conditions." It was to meet practices leading to such a result, we think, that section 3 was incorporated in the *Clayton Act*. Such restrictive covenants as contained in the company's leases tend to hamper competition and to create monopolies; and Congress, in the exercise of its power to regulate interstate commerce, was striking at practices of this sort as unfair trade practices which should be eliminated because of [53] their tendency. As said by Mr. Justice Day in *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 356:

"The Clayton Act sought to reach the agreements embraced within its sphere in their incipiency, and in the section under consideration to determine their legality by specific tests of its own which declared illegal contracts of sale made upon the agreement or understanding that the purchaser shall not deal in the goods of a competitor or competitors of the seller, which may 'substantially lessen competition or tend to create a monopoly.'" * * *

"Section 3 condemns sales or agreements where the effect of such sale or contract of sale 'may' be to substantially lessen competition or tend to create monopoly. It thus deals with consequences to follow the making of the restrictive covenant limiting the right of the purchaser to deal in the goods of the seller only. But we do not think that the purpose in using the word 'may' was to prohibit the mere possibility of the consequences described. It was intended to prevent such agreements as would under the circumstances disclosed probably lessen competition, or create an actual tendency to monopoly. That

it was not intended to reach every remote lessening of competition is shown in the requirement that such lessening must be substantial."

And concerning the function of the Commission in applying the act Mr. Justice Brandeis used the following pertinent language in his dissenting opinion in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 435, 436 [2 F. T. C. 564]:

"Instead of attempting to inflict punishment for having done prohibited acts, instead of enjoining the continuance of prohibited combinations and compelling disintegration of those formed in violation of law, the act undertook to preserve competition through supervisory action of the Commission. The potency of accomplished facts had already been demonstrated. The task of the Commission was to protect competitive business from *further* inroads by monopoly. It was to be ever vigilant. If it discovered that any business concern had used any practice which would be likely to result in public injury—because in its nature it would tend to aid or develop into a restraint of trade—the Commission was directed to intervene, before any act should be done or condition arise violative of the Anti-Trust Act. And it should do this by filing a complaint with a view to a thorough investigation; and, if need be, the issue of an order. Its action was to be prophylactic. Its purpose in respect to restraints of trade was prevention of diseased business conditions, not cure."

The company contends that its appliances are leased to its customers as a trade service for the purpose of facilitating the use of its wire and strapping, and, in support of the condition of the lease restricting their use to that purpose, relies upon the decision of the Supreme Court in *Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463 [6 F. T. C. 587], in which it was held not a violation of the act for an oil company to lease gasoline pumps to a retail dealer in gasoline on condition that they be used only with gasoline supplied by the lessor. In that case, however, the leased equipment was to be used in connection with the sale of the lessor's product; here it is to be used by the ultimate consumer of the product. There, the limitation on the use of the equipment was necessary to prevent a fraud upon the lessor and the public, as the use of the pumps in the sale of gasoline carried the implied representation that it was the gasoline of lessor that was being sold; and as said in *Oxford Varnish Corporation v. Ault & Wiborg Corp.*, 6 Cir. 83 F. (2d) 764, 767, "The clear purpose of the Clayton Act is to preserve legitimate competition, not to penalize efforts reasonably directed to safeguard against unfair competition. It is the proverbial 'shield' of the fair trader, not the 'sword' of his unfair competitor." No such limitation is necessary or appropriate here to guard against unfair competition; and the conclusion is inescapable that it serves no purpose except to exclude lessor's competitors from making sale of wire and

strapping to its customers and is resorted to solely for that purpose. The *Sinclair case* was distinguished in *International Business Machines Corp. v. United States*, *supra*, 298 U. S. 131, 135, in which the Supreme Court emphasized that the only use made of the gasoline in the *Sinclair case* was "to sell it" and that there was no restraint upon the purchase and sale of competing gasoline. Here, as we have seen, there is a practical restriction upon the purchase and use of competing wire and strapping.

On the company's second contention, we cannot say that the Commission's [54] finding of substantial lessening of competition is without support in the record. The line of commerce involved is, as stated, the sale of wire and strapping for use in tying machines, but the company does business in this line of commerce throughout the nation and the volume of its sales through the three years under consideration exceeded an annual average of \$2,000,000.00. The presence of the restrictive condition in its leases necessarily means that the larger part of this large volume of trade was practically tied up or at least removed from the normal influence of competition. And as pointed out by the Commission, the effect of the trade practice of the company is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the three leading companies in the tying machine industry, all three of whom were subjected to orders by the Commission. The fact that these three companies controlled from two thirds to three fourths of the business done by the tying machine industry and a considerable percentage of the total business in wire and strapping sold for packaging goods, and that the restrictive conditions of their leases interfered with the normal operation of competition in so large a volume of trade, was sufficient justification, without more, for the finding that the lessening of competition resulting from the restrictive conditions was substantial within the meaning of the act.

There is reason in the position that the substantiality of the lessening of competition is to be judged with reference to the effect of the trade practice upon the volume of business controlled by the person engaging in it, not with reference to the proportion which that business bears to the entire volume of such business throughout the country. *Oxford Varnish Corp. v. Ault & Wiborg Corp.*, *supra*. If a dealer by such unfair trade practice as is here involved restrains competition with respect to his customers, he ought not be permitted to continue it because his portion of the national business is small; and we do not think that such was the intention of Congress in the requirement of the *Clayton Act* that the lessening of competition be substantial. Cf. *N. L. R. B. v. Fainblatt*, 306 U. S. 601, 606. We need not decide this point, however, as we are of opinion that, even though the sales of wire and strapping throughout the country be considered, it

cannot be said that the findings of the Commission as to substantial lessening of competition are without support in the record.

The company makes a special contention with respect to its large automatic wire tying machines. It says that since the summer of 1938 it has entered into contracts for the sale of wire which give to the customers an option to lease a number of the machines. It appears, however, that the rental contract covering the machines contains a provision that the customer will use in the machines "only wire ordered and secured" from the company. Whether the execution of such rental contracts is required of those who exercise the option to lease contained in the sales contracts is not clear; but, if the condition forbidden in the order of the Commission is not made a part of such contracts, the order will not, of course, apply to them. It is significant, however, that prior to 1938 contracts for the sale of wire required customers to purchase their entire requirements from the company. The company amended this form of contract to eliminate this requirement, sending to customers a letter to that effect, which, however, made clear that the machines leased were to be used only with the wire supplied by the company, saying: "It was not and is not our intention to so interpret our contract (i. e. as requiring customers to purchase their entire requirements from the company); all we expect is that machines placed by us shall be used with wire supplied by us." As stated, however, if the restrictive condition is not made a part of the leases of the automatic wire tying machines, the order of the Commission will not apply to them, since its command is that the company cease from leasing, etc., its machines and appliances upon such condition, agreement, or understanding, or enforcing such condition, agreement, or understanding, or continuing it in operation or effect.

For the reasons stated, the order of the Commission will be enforced.
Order enforced.

LOUIS KELLER, ET AL., DOING BUSINESS AS CASEY CONCESSION COMPANY v. FEDERAL TRADE COMMISSION¹

No. 7904—F. T. C. Dock. 3413

(Circuit Court of Appeals, Seventh Circuit. Nov. 28, 1942)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—LIMITATIONS OF COURT.

Circuit Court of Appeals on review of order of Federal Trade Commission will not pass upon credibility of witnesses or weight of testimony, but determines only whether finding is supported by substantial evidence.

¹ Reported in 132 F. (2d) 59. For case before Commission, see 33 F. T. C. 1588.

METHODS, ACTS AND PRACTICES—PUBLIC POLICY VIOLATING—LOTTERY MERCHANDISING—MERCHANDISE PRIZES IN PACKAGE CANDY FOR CONCESSIONARIES.

Conflicting testimony supported finding of Federal Trade Commission that merchandise prizes placed by petitioners in package candy distributed in interstate commerce to operators of amusement concessions at carnivals, varied in retail value and thereby constituted a "lottery" or "gift enterprise" and amounted to an "unfair method of competition" in violation of Federal Trade Commission Act. Federal Trade Commission Act, Sec. 5, as amended, 15 U. S. C. A., Sec. 45.

EVIDENCE—WITNESSES—COMPETENCE—VALUE OF MERCHANDISE.

Witness who had been employed by wholesale company for 27 years, and who had headed its importing department, and had been in charge of advertising and compilation of catalogues and handled sales correspondence, but had not acted as buyer or salesman, and who testified that he knew the cost to his company and the price at which it sold at wholesale certain merchandise, was competent to testify before the Federal Trade Commission as to the value of such merchandise, and the question of his qualifications merely went to the weight to be given his testimony.

METHODS, ACTS AND PRACTICES—PUBLIC POLICY VIOLATING—LOTTERY MERCHANDISING—MERCHANDISE PRIZES IN PACKAGE CANDY FOR CONCESSIONARIES.

Disclosure by petitioners of a variation in cost of merchandise prizes placed in package candy distributed in interstate commerce to operators of amusement concessions at carnivals of some 1400 percent was "substantial evidence" to support Federal Trade Commission's finding of a variation in retail value of such merchandise prizes thereby constituting a "lottery" or "gift enterprise" and amounting to an "unfair method of competition" in violation of Federal Trade Commission Act.

CEASE AND DESIST ORDERS—EXTENT—LOTTERY MERCHANDISING—MERCHANDISE PRIZES IN PACKAGE CANDY.

Where prize merchandise and candy were packaged together, so that act of selling merchandise was necessarily incidental to sale of candy and the two transactions constituted one related act, Federal Trade Commission's cease and desist order properly included the prohibition of sale of other merchandise as well as of candy by use of lottery methods.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ESTABLISHING AS UNFAIR METHOD OF COMPETITION—LESSENING OF COMPETITION—WHETHER SHOWING OF PREREQUISITE.

Where method of competition pursued by petitioners was within line of conduct classified as unfair competition, a showing of a lessening competition arising from the practices complained of was not necessary to support a cease and desist order.

FEDERAL TRADE COMMISSION ACT—SCOPE AND FUNCTION—AS PREVENTIVE OF UNFAIR METHODS OF COMPETITION IN INCIPIENCY.

The intent of the Federal Trade Commission Act is to prevent potential injury by stopping unfair methods of competition in their incipency.

(The syllabus, with substituted captions, is taken from 132 F. (2d) 59)

On petition to review order of Commission, order affirmed.

Mr. Morris A. Haft, of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, asst. chief counsel, *Mr. John W. Brookfield* and *Mr. James W. Nichol*, sp. attys., Federal Trade Commission, all of Washington, D. C., for Commission.

[60] Before SPARKS and MAJOR, Circuit Judges, and LINDLEY, District Judge.

LINDLEY, *District Judge*.

In this review of an order of the Federal Trade Commission petitioners contend that (1) no substantial evidence supports the findings; (2) the testimony of one witness should have been stricken; (3) the order is broader than the complaint and (4) the proceeding is not in the public interest because petitioners' practices did not result in injury to competition.

The complaint charged and the Commission found that petitioners, copartners, were in competition with others selling and distributing in interstate commerce to operators of and concessionaires with carnivals, traveling shows, and similar instrumentalities of amusement, candy and other merchandise, so packed as to bring into play a lottery when sold to consumers; that petitioners sold cartons of multiple packages, containing substantially identical amounts of candy and diverse other merchandise; that the articles contained in the packages were of varying value and their identity and value incapable of ascertainment by consumers until the packages were purchased and opened; that such distribution involved utilization of a lottery or gift enterprise contrary to law and amounted to unfair methods of competition in violation of the pertinent Act. 15 U. S. C. A. Sec. 45.

Petitioners admit that they are engaged in sale and distribution of candy and other merchandise in interstate commerce, in competition with others, sold in packages identical in appearance, and that the character of the merchandise and its value can not be ascertained until the package is opened. They aver, however, that "all items of merchandise contained in the packages * * * are of equal retail value and no person receives merchandise of greater value than any other person purchasing a like package." The issue, therefore, before the Commission and presented to us, is whether the merchandise contained in the packages of candies, commonly spoken of as prize merchandise, unseen by the consumer, varies in quality and value so as to create an element of chance in making sales.

The evidence established that the goods are sold at wholesale in cartons of about 110 packages, each of which contains a certain number

of pieces of candy and an article of merchandise and is sold to consumers at the same price; that the merchandise is of some 20 to 34 different kinds; that it is impossible to sell prize candy if the merchandise is the same in each package because the consumer hopes to get the more valuable prize; that the concessionaires selling the packages usually place those containing the more valuable articles at the top so that they are sold first and the attention of the crowd in which the goods are circulated is directed to them as they are taken from these packages; that the articles vary in value from 10 cents for certain ones to 75 cents for others and \$1 for others; that the merchandise when purchased by petitioners to be placed in the packages, varies in cost in some instances some 1400 percent.

Petitioners contend that the Commission should have found that each article had a retail value of 10 cents. But it is to be observed that evidence as to the cost to petitioners of the respective articles with resultant wide spreads in wholesale value was supplied by themselves. Petitioners offered evidence contradicting that presented by the Commission. But it is not for us to pass upon the credibility of the witnesses or the weight of the testimony. Our task is to determine only whether the finding is supported by substantial evidence. We held in *Hofeller v. Federal Trade Commission*, 82 F. (2d) 647 (CCA7) [22 F. T. C. 1138] that such methods as those employed here are illegal, provided the merchandise distributed varies in retail value. Inasmuch as, upon conflicting testimony, the Commission has found such variation, it is not for us to impeach that determination of credibility or the ultimate finding thus arrived at. *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63 [11 F. T. C. 636]; *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117 [25 F. T. C. 1715].

[61] But petitioners insist that the Commission should have stricken the testimony of one Rinkenberger on the ground that he lacked qualification to testify as to value. This witness testified that he had been employed by a wholesale company for some 27 years; that he had been the head of its importing department, in charge of advertising and compilation of catalogues for a number of years, handling sales correspondence and working for the company in various capacities but not as a buyer or salesman; that his company handled merchandise similar to that involved here and that he knew its cost to his company and the price at which it was sold at wholesale and that he had such information as to retail prices as he had derived from his knowledge and experience and contacts with customers of his company who made retail sales. In this situation we think the question was not properly whether the witness was qualified to testify but, rather, what weight was to be given to his testimony. And with that we are not concerned. In addition to the testimony of this witness

the Commission presented other evidence and, as we have seen, petitioners themselves disclosed a variation in cost of merchandise placed in the packages of some 1400 percent. In our opinion the latter fact in itself constituted substantial evidence to support the Commission's finding. In view of its existence, the action of the Commission in refusing to strike Rinkenberger's testimony, even if erroneous, is immaterial. *Hills Bros. v. Federal Trade Comm.*, 9 F. (2d) 481, 484 (CCA9) [10 F. T. C. 653], cert. denied 270 U. S. 662; *Arkansas Wholesale Grocers' Association v. Federal Trade Comm.*, 18 F. (2d) 866 (CCA8) [11 F. T. C. 646], cert. denied 275 U. S. 533.

Petitioners further complain that the cease and desist order is too broad, in that it directs them to refrain from the use of lottery methods in the sale not only of candy, but of any merchandise. It is clear from the evidence that candy and various kinds of merchandise are sold in identical packages, as the Commission contended. The complaint charged the improper sale and distribution of candy "and other merchandise," so packed and assembled as to involve the use of a lottery scheme when sold to the consumer.

The act of selling merchandise was necessarily incidental to the sale of candy, and the two transactions constituted one related act. The method of selling pursued constituted an unlawful method of competition. Under this situation, it was proper to include a prohibition of sale of other merchandise as well as of candy. *Haskelite Manufacturing Corp. v. Federal Trade Comm.*, 127 F. (2d) 765, 766 (C. C. A. 7) [34 F. T. C. 1855]. This conclusion, we think, is well within the limits of the Supreme Court's reasoning in *National Labor Relations Board v. Express Publishing Company*, 312 U. S. 426.

Petitioners insist further that the proceeding against them is not in the public interest because the competition they offer is small, and results in no substantial "lessening of competition." But the record is clear that the method pursued by petitioners in competition with others was within the line of conduct which has from time to time been stamped as unfair competition. And it is unnecessary that there be proof of a lessening of competition arising from the practices complained of. It is the intent and purport of the Act to prevent potential injury by stopping unfair methods of competition in their incipiency. *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 647 [15 F. T. C. 598]; *Koolish v. Federal Trade Commission*, 129 F. (2d) 64, 65 (C. C. A. 7) [34 F. T. C. 1863]; *National Candy Co. v. Federal Trade Comm.*, 104 F. (2d) 999, 1006 (C. C. A. 7) [29 F. T. C. 1557], cert. denied 308 U. S. 610. In view of the established illegality of the conduct complained of, *Federal Trade Commission v. Keppel & Bros.*, 291 U. S. 304, 308 [18 F. T. C. 684];

Kritzik v. Federal Trade Comm., 125 F. (2d) 351, 352 (C. C. A. 7) [34 F. T. C. 1808], its suppression is in the interest of the public.

In this connection, petitioners rely upon *Standard Oil Company v. Federal Trade Comm.*, 282 Fed. 81 [5 F. T. C. 542], but the announcement of the court there is not applicable here in view of the fact that the statute upon which that cause was bottomed was the Federal Antitrust Act, forbidding monopolies or unreasonable restraints of trade, where the extent and amount of effect upon competition are most material. Here the complaint was directed against petitioners' illegal procedure, with the intent to prevent, in the interest of the public, the unfair acts complained of tending to the detriment of the public generally. The injury arising from such competition, measured in dollars and cents, is wholly immaterial.

The order is affirmed.

PERFECT VOICE INSTITUTE ET AL. v. FEDERAL TRADE COMMISSION¹

No. 7851—F. T. C. Docket 4047

(Circuit Court of Appeals, Seventh Circuit. Nov. 30, 1942)

Order granting leave, on motion of counsel for petitioners, to withdraw petition for review of order of Commission in Docket 4047, 33 F. T. C. 1361, requiring respondents, in connection with offer, etc., in commerce, of their course of instruction in the development of the voice, to cease and desist from representing that (1) the development and control of the muscles of the tongue has any beneficial effect upon the voice other than to make it louder or stronger; (2) the use of respondents' course of instruction has any beneficial effect upon the voice other than to make it louder or stronger; or (3) by the use of respondents' course of instruction physical defects of the vocal organs may be corrected, or stammering overcome.

Mr. Adelor J. Petit, Jr., of Petit, Olin and Overmyer, Chicago, Ill., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Maurice C. Pearce*, trial attorney, both of Washington, D. C., for Commission.

Before EVANS and KERNER, *Circuit Judges*.

ORDER

On motion of counsel for petitioner, it is ordered by the Court that leave be granted to petitioner to withdraw the Petition for Review filed herein, the matter in controversy having been settled.

¹ Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 1361.

FEDERAL TRADE COMMISSION v. STANDARD
EDUCATION SOCIETY ET AL.

No. 14517—F. T. C. Dock. 1574

(Circuit Court of Appeals, Second Circuit. Dec. 10, 1942)

Order, without opinion, (1) denying motion to enjoin the Commission, the United States Attorney General, and the United States Attorney at Chicago, Ill., from proceeding with a penalty action instituted by the Government in the U. S. District Court for the Northern District of Illinois against the respondents, to recover civil penalties under Section 5 (1) of the Federal Trade Commission Act as amended by the Wheeler-Lea Act of Mar. 21, 1933, for alleged violations of the Commission's modified order to cease and desist of Mar. 28, 1940; and (2) directing the Commission "to proceed with the reference heretofore ordered on or before February 1st, 1943," failing which, order of reference will be revoked.

Mr. W. T. Kelley, chief counsel, and *Mr. Cyrus B. Austin*, special attorney, Federal Trade Commission, of Washington, D. C., for the Commission.

Mr. Henry Ward Beer (*Mr. Hyman L. Goldstein* on the brief), of New York City, for respondents.

DECISION AND ORDER

"Motion for injunction denied. Commission to proceed with the reference heretofore ordered on or before February 1st, 1943; otherwise the order of reference will be revoked."

STATEMENT BY THE EDITOR

The Commission's modified order, alleged violation of which is in issue in the penalty action referred to in the District Court, issued on March 28, 1940, 30 F. T. C. 827, following final decree of the Circuit Court of Appeals on May 20, 1938, required respondent corporations and respondent individuals, their officers, etc., in connection with the offer, etc., in commerce, of books, sets of books, or publications, to cease and desist from various false and misleading advertisements and misrepresentations in connection therewith, as therein set forth.

The Court's reference, above referred to, on May 20, 1938, 26 F. T. C. 1524, was a part of its final decree on mandate of the Supreme Court, resetting the Court's order, requiring respondents

to cease and desist from the various practices indicated, and ordering the "proceedings be remanded to the Commission as Special Master to hear and report to this Court whether respondents have complied with the provisions of said order to cease and desist which are herein affirmed or modified and affirmed," and further ordering "that the cause await in this Court the return of that report of the Special Master for any proceedings that may be necessary in the premises."

The instant proceeding was initiated by an order directed to the Commission, the Attorney General and the United States Attorney at Chicago, requiring them to show cause why they should not be restrained from proceeding with said action in the District Court of Illinois; and requiring the Commission further to show cause "whether it should be held in contempt and restrained from further action therefor" of the Court's action of May 20, 1938, above referred to, and whether it should not proceed forthwith to act as Special Master in accordance with said decree in the proceeding before the Court and awaiting action, or to be removed by the Court as a Special Master.

Respondents' brief in support of said order developed the following points, namely: (1) that the penalty suit was in complete derogation of the Court's original complete, exclusive, and continuing jurisdiction, acquired when the transcript of record before the Commission was filed with it, and in violation of the decree of May 20, 1938; (2) that the penalty action was allegedly based on the so-called modified order which was null and void as in contravention of said decree; (3) that the Wheeler-Lea amendment gave the Commission no justification for the so-called modified order; (4) that said order did not properly issue under Section 5 (i) of the Federal Trade Commission Act, as amended by the Wheeler-Lea Act; (5) that the Wheeler-Lea amendments are wholly irrelevant; and (6) that the Court has full and complete authority to enjoin an attempted invasion of its exclusive and statutory jurisdiction, such as the penalty action in the District Court in Chicago.

Brief in behalf of Commission, in response to said order, after setting forth history of the proceeding and certain statutory background, develops, for reasons set forth at some length, the following broad points, namely: (1) that there is no cause why the Commission should be held in contempt of the Court; and (2) that the Court has no jurisdiction to enjoin the prosecution of said penalty suit in the Illinois District Court, and, in this connection, that (a) there is

no basis for an injunction against the Commission, and (b) that the issuance of an injunction staying the penalty suit in the District Court is not necessary for the complete exercise of the Court's jurisdiction in the proceeding in question.

ASSOCIATED NEWS PHOTOGRAPHIC SERVICE, INC.,
BLACKSTONE STUDIOS, INC., AND LEO FRIED AND
WILLIAM SHAPIRO v. FEDERAL TRADE COMMISSION¹

No. 17811—F. T. C. Dock. 3561

(Circuit Court of Appeals, Second Circuit. Dec. 24, 1942)

Ordered, pursuant to stipulation, that petition to review order of Commission in Docket 3561, 32 F. T. C. 1258, requiring petitioners, their representatives, etc., in connection with the solicitation of permission to make photographs or the offering for sale, etc., of photographs and photographic prints in commerce, to cease and desist from (1) using the words "news" or any other words, etc., of similar import or meaning in the corporate name of petitioner Associated News Photographic Service, Inc., or as a part of any other trade or corporate name, to designate, etc., a business which is principally that of selling photographic prints to persons photographed; or (2) representing, etc., to any prospective customer that petitioners, etc., are news or press photographers, or that any photograph solicited is for press or publicity purposes unless such photograph is actually for immediate news or press use; be withdrawn and proceedings dismissed, as below set forth.

Mr. Samuel Mezansky and *Mr. Boris Marcus*, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Joseph J. Smith, Jr.*, asst. chief counsel, and *Mr. James W. Nichol*, special attorney, all of Washington, D. C., for the Commission.

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto, that the petition for review of the cease and desist order of the Federal Trade Commission, respondent herein, filed in the office of the Clerk of this Court under date of June 21, 1941, be withdrawn and the proceedings herein dismissed,

¹ Not reported in Federal Reporter. For case before Commission, see 32 F. T. C. 1258.

without costs; and that the Clerk of this Court be and he hereby is authorized to enter an order to this effect.

(sg) SAMUEL MEZANSKY,
Samuel Mezansky.

(sg) BORIS MARCUS,
Boris Marcus.

Attorneys for the Petitioners.

(sg) JOSEPH J. SMITH, JR.,
Joseph J. Smith, Jr.,
*Assistant Chief Counsel,
Federal Trade Commission,
Attorney for the Respondent.*

DECEMBER 2, 1942.

So ordered: December 24, 1942.

D. E. ROBERTS, *Clerk.*

EARL ARONBERG, TRADING AS POSITIVE PRODUCTS
COMPANY AND REX PRODUCTS COMPANY v. FEDERAL
TRADE COMMISSION¹

No. 7834—F. T. C. Dock. 3856

(Circuit Court of Appeals, Seventh Circuit. Dec. 28, 1942)

METHODS, ACTS, AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR
MISLEADINGLY—FALSITY ISSUE—FAILURE TO DISCLOSE—ULTIMATE IMPRESSION
AS CRITERION—MEDICINAL PREPARATIONS.

In determining whether advertisements of medicinal preparation for relief of delayed menstruation were false in failing to reveal dangerous potentialities, the buying public does not ordinarily carefully study or weigh each word in advertisement, but the ultimate impression upon mind of reader arises from the sum total of not only what is said, but also of all that is reasonably implied. Federal Trade Commission Act, Secs. 12, 15; 15 U. S. C. A., Secs. 52, 55.

FEDERAL TRADE COMMISSION ACT—SCOPE AND FUNCTION—PROTECTION OF PUBLIC.

The Federal Trade Commission Act is not made for experts, but to protect the "public" which constitutes the vast multitude including the ignorant, the unthinking, and the credulous who, in making purchases, are governed by appearances and general impressions.

¹ Reported in 132 F. (2d) 165. For case before Commission, see 33 F. T. C. 1327. Rehearing denied Jan. 29, 1943.

METHODS, ACTS, AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—FALSITY ISSUE—ADVERTISEMENT AS A WHOLE AS TEST.

In determining their falsity, advertisements must be considered in their entirety, and as they would be read by those to whom they appeal.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—FALSITY ISSUE—CRITERIA—ULTIMATE IMPRESSION.

If Federal Trade Commission having discretion to deal with such matters, thinks it best to insist on a form of clear advertising, it is not for the Court to revise commission's judgment, since advertisements are intended not to be carefully dissected with a dictionary at hand, but rather to produce an impression upon prospective purchasers.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—MEDICINAL PREPARATIONS—"RELIEF."

Evidence sustained Federal Trade Commission's finding that statements, in petitioner's advertisements regarding medicinal preparations for "relief" of delayed menstruation were misleading and deceptive to the public, justifying commission's cease and desist order for failure to disclose that product contained dangerous drugs in quantities sufficient to endanger health.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—MEDICINAL PREPARATIONS—"RELIEF."

[166] The term "relief" is not of definite connotation nor entirely free from ambiguity; in a common sense, it connotes permanent removal of "organic" or "functional disturbance" as distinguished from alleviation of discomfort, the words "functional" and "organic" being employed with reference to the functions of the human organs.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—MEDICINAL PREPARATIONS—PREPARATIONS AS "FOR" OR "TREATMENTS FOR."

Under Federal Trade Commission Act, a representation that a medicine is "for" or a "treatment for" a disorder is equivalent to labeling it "as a cure or remedy."

EVIDENCE—WITNESSES—WEIGHT OF TESTIMONY AND CREDIBILITY.

The weight of testimony and credibility of witnesses were for the Federal Trade Commission.

FINDINGS OF COMMISSION—WHERE SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Federal Trade Commission's findings supported by substantial evidence must be upheld.

(The syllabus, with substituted captions, is taken from 132 F. (2d) 165)

On appeal from review of order of Commission, order affirmed.

Mr. David Silbert, of Chicago, Ill. (Jacobson, Merrick, Nierman & Silbert, of Chicago, Ill., on the brief), for petitioner.

Mr. William T. Kelley, chief counsel, Federal Trade Commission; Mr. Joseph J. Smith, Jr., asst. chief counsel; Mr. R. P. Bellinger, Mr. James W. Nichol, and Mr. J. B. Trully, sp. attys., all of Washington, D. C., for Commission.

Before EVANS and MINTON, Circuit Judges, and LINDLEY, District Judge.

LINDLEY, *District Judge*:

Petitioner seeks to vacate an order of the Federal Trade Commission directing him to cease and desist from certain alleged unfair and deceptive trade practices in violation of the pertinent Act, 15 U. S. C. A., Sections 52, 55.

The complaint averred that petitioner, in selling, in interstate commerce, medicinal preparations for relief of delayed menstruation, known as "Triple-X Compound," "Reliable Perio Compound," "Perio Pills," and "Perio Relief Compound," falsely advertised that the compounds are effective, harmless remedies for such delay, accomplishing immediate effective results painlessly; that, in fact, the products contain dangerous drugs in quantities sufficient to endanger health and that petitioner's advertisements were false in that they failed to reveal these dangerous potentialities.

The Commission found the averments sustained by the proof and directed petitioner to cease and desist from advertising his preparations so as to state, directly or by implication, that they are an effective remedy or that they are harmless or safe to use, or so as to fail to reveal that their use may produce gastro-intestinal disturbances, severe toxic and circulatory abnormalities, and, in pregnancy, violent poisonous effects.

Petitioner contends that his advertisements do not assert that his product is a remedy but merely that it provides relief. He insists that there is no evidence to support the finding to the contrary or the further finding that use of his preparations is dangerous, if the directions accompanying them be followed.

The following is typical of the advertising:

"DELAY NEVER WORRIES ME

"Don't be alarmed over delayed, overdue, unnaturally suppressed periods. A new discovery—TRIPLE-X RELIEF COMPOUND is *fastest acting, safest* aid to married women. Acts without discomfort or inconvenience even in obstinate cases."

[167] "MANY WOMEN TESTIFY TO ITS RELIEF FOR DELAY
WHY DON'T YOU DO WHAT SO MANY OTHER WOMEN DO?"

"Thousands of women are needlessly miserable and unhappy because of abnormally delayed periods. If you are one of these troubled, discouraged women, lose no time in trying PERIO RELIEF COM-

POUND. Scores of women in every part of the country, in large cities and small towns, *highly praise* PERIO RELIEF COMPOUND for its reputed effectiveness and the blessed relief it gives them.

"TIME TESTED

"PERIO RELIEF COMPOUND is a time tested preparation which can be taken at home without anyone knowing and in most cases with little, if any discomfort; and most often without interfering with daily activities. Thousands of modern-minded women have used PERIO RELIEF COMPOUND; a large number of them having heard about it through friends who have been helped and are therefore grateful. Many who said their periods were long overdue, severely obstinate, abnormally suppressed, or painfully scanty claim PERIO RELIEF COMPOUND among the most pleasant and most satisfactory aids they ever used."

"A MODERN AID FOR MARRIED WOMEN

"Much of the constant charm and loveliness of womanhood depends upon a regular occurrence of her periodic function. When a lapse of this vital function occurs due to such causes as a cold, nervous strain, exposure, or many other abnormal reasons, her comfort is often disturbed by pain * * * her disposition is apt to turn irritable. What is more, the happiness of those dear to her may be affected.

"Perhaps you have been faced with this situation.

"For countless women such unnatural interruption is often needless. To them a simple preparation is offered, which in many cases of abnormally suppressed, overdue, scant, and painful periods has helped start the function, thus bringing gratifying relief. It is called PERIO RELIEF COMPOUND and may be taken at home without, in most instances, interfering with daily activities.

"PERIO RELIEF COMPOUND is to quickly and harmlessly aid most abnormally suppressed functions, in cases where no organic disorder is present.

"It is made expressly for this purpose, and is offered to you on a money-back guarantee. Should it not give absolute satisfaction with the very first order, your cost is promptly refunded."

To an educated analytical reader, these and similar statements may not seem to claim anything more than to relieve delayed menstruation. But the buying public does not ordinarily carefully study or weigh each word in an advertisement. The ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also of all that is reasonably implied. As we said in *D. D. D. Corporation v. Federal Trade Commission*, 125 F. (2d) 679, 681 [34 F. T. C. 1821]: "Petitioner argues this phrase ('for quick relief from itching of eczema, etc.') can only refer to itching, and that there is no implication the product is a remedy or relief from 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." The law is not made for experts but to protect the public—that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions. *Florence Mfg. Co. v. Dowd*, 178 Fed. 73 (CCA2). Advertisements must be considered in their entirety, and as they would be read by those to whom they appeal. *Ford Motor Co. v. Federal Trade Commission*, 120 F. (2d) 175, 182 (CCA6) [33 F. T. C. 1781]. If the Commission, having discretion to deal with these matters, thinks it best to insist upon a form of advertising clear enough so that, in the words of the prophet Isaiah, "way-faring men, though fools, shall not err therein," it is not for the courts to revise its judgment. Advertisements are intended not "to be carefully dissected with a dictionary at hand, but rather to produce an impression upon" prospective purchasers. *Newton Tea & Spice Co. v. United States*, 288 Fed. 475, 479 (CCA6, 1923).

[168] The public is not learned in medical terminology. Very probably, to it, the distinction which petitioner suggests between "functional" and "organic" causes is, we think, without significance inasmuch as the terms are employed with reference to the functions of the human organs. The term "relief" is not of definite connotation or entirely free from ambiguity; in a common sense, it connotes permanent removal of organic or functional disturbance, as distinguished from alleviation of discomfort. *Stedman's Medical Dictionary* (14th rev. ed. 1939). *Dorland. The American Illustrated Medical Dictionary* (18th ed. 1938), *Webster's New International Dictionary* (2nd ed., Unabridged, 1937), *The Oxford English Dictionary* (1933), *Funk & Wagnall's New Standard Dictionary* (1930), *Century Dictionary* (rev. ed. 1914). Petitioner's testimonial letters specifically refer to his Perio preparation as a "remedy"; he states that his drugs are "for" delayed menstruation, that he "highly recommends" them and that "full treatment" will be sent for a stipulated sum; that because his "medicine" is available there is no necessity for "discouragement, concern or alarm" over "delayed, overdue, unnaturally suppressed periods," or "abnormal" or "unnatural functional delay"; that his preparations "work" without pain or inconvenience; that they "end delay," possess "high quality and effectiveness," and are "absolutely guaranteed."

Use of the words "for drunkenness" has been held equivalent to saying that a drug is a "cure, mitigation, treatment, or prevention of drunkenness." *United States v. 11¼ Dozen Packages*, 40 F. Supp. 208, 210 (W. D. N. Y., 1941). A representation that a medicine is "for" or a "treatment for" a disorder is equivalent to labeling it "as a cure or remedy." *Hall v. United States*, 267 Fed. 795, 798 (CCA5). Labeling of mineral water as "Recommended in the treatment" of diseases can "only mean that the use of the water in the treatment of the diseases named would effect a cure or alleviation * * *"
Bradley v. United States, 264 Fed. 79 (CCA5).

Petitioner employed such statements as "Don't be alarmed over delayed, overdue, unnaturally suppressed periods"; "Thousands of women are needlessly miserable and unhappy because of abnormally delayed periods"; "For countless women such unnatural interruption is often needless." Any such unnatural delay undoubtedly causes some concern to any woman, and representations that the preparations will remove such alarm quite reasonably, it seems to us, imply that they will effect a remedy. The cause of the patient's concern is not so much in the discomfort suffered as in the reason for the unnatural abnormal delay. We think, therefore, that the edict that there is no need for the purchaser to worry reasonably justifies an inference that if she buys and uses the preparations, she will not only experience some relief from inconvenience and discomfort but also remove the cause. The implication is aided by the reference to the preparation as an "aid" to abnormally suppressed functions. The phraseology is such that we believe the Commission justified in finding that petitioner reasonably implies that if his preparations do not work a complete cure they will at least substantially aid in removal of the cause of failure of normal functions.

This is confirmed by testimonials received by petitioner from users demonstrating that the writers actually believed petitioner's preparations to be remedies. The following are examples: "I received wonderful results and got along after I tried many other remedies which failed." "Please send me without delay a box of your Perio Pills. The others worked fine, and I am able to say they are the only remedy that helped me." "I have received help from your medicine. I just took one box of Perios. It was a delay of nine weeks. Sure was glad to get in touch with your wonderful help." It is apparent that petitioner's preparations were believed in the minds of the authors of these letters to be a cure, not merely means for relief.

Petitioner insists, however, that under our language in *D. D. D. Corporation v. Federal Trade Commission*, 125 F. (2d) 679, 682 [34 F. T. C. 1821], "relief" connotes only alleviation. In that case, the court stated that the words "relief from itching" carried no implication that the product furnishing such relief was a permanent cure

for the disease. There, however; itching was merely a symptom of eczema, scales, rash or other skin diseases and the preparation did offer temporary relief. Here the tone of petitioner's statements was such as to imply that his preparations would relieve the patient of functional disorder. They did not emphasize that petitioner's preparations would relieve [169] headaches, backaches, sluggishness, and other results of delayed menstruation, but they were such as to induce the belief that the cause would be remedied. Furthermore in the cited case, the court carefully distinguished a statement that D. D. D. preparation would offer "relief from itching" from one "for quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes, etc.," holding that the latter implied remedial qualities.

Petitioner further insists that there is no basis for the finding that his preparations are dangerous or that he failed to give adequate warning of their probable effects. The advertisements contain no directions for use or warning that the preparations may be dangerous. It is only upon order and receipt of the preparations,—usually by mail,—that directions are received.

The Act forbids dissemination of any misleading advertisement which fails to reveal facts material in view of the consequences of the use of a commodity. 15 U. S. C. A., Sections 52, 55.

Petitioner made such claims as the following:

"Perio Relief Compound contains no habit-forming drugs, but is made almost solely of pure vegetable ingredients such as may be used by many physicians in their practice."

"Perio Relief Compound is made to quickly and harmlessly aid most abnormally suppressed functions, in cases where no organic disorder is present."

By these assertions, clearly, it was meant to suggest that no harm would or could result from the use of the preparations.

Prior to the investigation, the labels suggested four capsules each day, one before each meal and one upon retiring. Subsequently, the directions were altered to direct that the medicine should not be continued for more than ten days, allowing one week to elapse before resuming; to warn users not to use the pills during pregnancy, and to cease use temporarily if they caused excessive bowel action.

Of the constituent elements of petitioner's preparations, aloes, extract of cotton root, black hellebore, and oil savin are strong cathartics and gastro-intestinal irritants; ergotin causes constriction of the blood vessels and contraction of the involuntary muscles, including the muscles of the uterus, and in pregnant women, aloes, ergotin, extract of cotton root, and quinine sulphate supply abortifacient impulses.

Physicians, experts in gynecology and obstetrics, testified as to the qualities and effects of the preparations. They generally agreed that

taking them in small quantities or for a short period would probably not cause a serious result, although the patient might experience discomfort. However, their evidence is that if the medicines are taken for a period of from four to ten days as prescribed, danger of a severe abnormal circulatory condition due to constriction of blood vessels will arise, resulting in severe gastro-intestinal disturbances and violent poisonous effects upon the human organic system. In some instances, where women are particularly susceptible to or are suffering from certain diseases, such results will appear more quickly and will be fraught with greater danger. In pregnancy, harmful results will be more probable and, when occurring, more pronounced. Use of such preparations may cause abortion. An overdose of from six to twelve pills in a day may produce dangerous results within a day or two, while taking the pills as prescribed for a period of from two to three weeks is likely not only to produce the mentioned dangerous results, but also to lead to a gangrenous condition of serious nature. The concensus of the expert testimony was that petitioner's preparations are not competent, safe, or reliable as a relief for delayed menstruation because of the heavy dosage of drugs contained in each capsule. There was also substantial agreement among all the medical witnesses that in sound medical practice, doctors will prescribe emmenagogues only in exceptional cases, and then only after careful examination of the patient and under strict instruction and supervision.

It is thus apparent that the Commission was justified in believing that where preparations such as petitioner's are sold indiscriminately to the public and taken without medical supervision, prescription or adequate warning as probable effect, many users, because of ignorance, alarm or desire for quick relief, are likely to take excessive or too frequent doses, thus increasing the dangerous potentialities. Yet there is nothing to warn users against such contingencies. In fact, statements that the preparations are "harmless," "non-habit forming," "pure vegetable in[170]gredients" quite reasonably lead users to believe that not only are the capsules absolutely safe to use as suggested but safe to use in excess.

True, the Commission's evidence was zealously controverted by petitioner. But the triers of the facts were in a position to weigh the testimony and the credibility of the witnesses. In view of substantial evidence to support the findings and our lack of authority to pass upon credibility or weight of evidence, they must be upheld. Federal Trade Commission Act, 15 U. S. C. A., Sec. 45 (c); *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117 [25 F. T. C. 1715]; *Dr. W. B. Caldwell, Inc. v. Federal Trade Commission*, 111 F. (2d) 889, 891 (CCA7) [30 F. T. C. 1670].

The order is affirmed.

PENALTY PROCEEDINGS ¹

During the six-month period covered by Volume 35, July 1 through December 31, 1942, civil penalties in the amount of \$1,500 were collected in the following cases, in which alleged violations of cease and desist orders had been certified to the Attorney General:

United States v. Gynex Corp. (Bureau of Hygiene), United States District Court for the Southern District of New York; judgment for \$500 satisfied July 14, 1942.

The Commission had ordered Gynex Corporation, its representatives, etc., in connection with the offering for sale, sale and distribution of medicinal or pharmaceutical preparations and appliances designed for and used in the treatment of various female ailments and conditions and for feminine hygiene purposes, to cease and desist from representing, directly or by implication: ²

1. That the preparations "Gynettes," "Gynex Tablets," and "Gyn-osal" are competent and effective preventatives of conception, an absolute protection against pregnancy, and can be depended upon for such purposes without limitation;
2. That the preparations "Gynettes," "Gynex Tablets" and "Gyn-osal" are competent and reliable remedies, treatments, and cures for ills and diseases peculiar to women, including leucorrhoea, inflamed membranes, vaginal and pelvic inflammation, and nervous conditions;
3. That the preparation "Viornetts" is a competent and effective treatment or cure for period pains and irregularities in the menstruation period of women, a sedative for uterine and ovarian troubles of women and that it strengthens the ovaries and uterus;
4. That said preparations and appliances have been tested and approved by an independent organization devoted to scientific research on questions involving the methods of preventing conception and pre-

¹ During the period covered by this volume, i. e., July 1, 1942, to December 31, 1942, inclusive, the Supreme Court on October 12, 1942, in *Piuma v. United States*, 317 U. S. 637; 63 S. Ct. 28, denied petition for certiorari to review the decision of the Circuit Court of Appeals for the Ninth Circuit in *Joseph A. Piuma v. United States*, 126 F. (2d) 601; 34 F. T. C. 1837.

Said decision upheld the judgment of the District Court for the Southern District of California, Central Division, in awarding civil penalties in the sum of \$3,250 against defendant Piuma for violation of the Commission's cease and desist order against him in Docket 2229, 24 F. T. C. 939; through statements and representations in subsequent advertisements of his "Glendage" gland tablets in newspapers of wide interstate circulation. See, for opinion and decision of District Court, *United States v. Piuma*, 40 F. Supp. 119, 33 F. T. C. 1827.

² Docket 3042, May 7, 1937; 24 F. T. C. 1193.

venting, treating, and curing the diseases, maladies, and conditions peculiar to women, until and unless such an organization has tested and approved said preparations and appliances; and

5. That said preparations and appliances may be used with safety and without deleterious effects by all women.

United States v. Sweet Candy Co., United States District Court for Utah; judgment entered for \$1,000 and satisfied October 10, 1942.

Respondent, Sweet Candy Company, its representatives, etc., in connection with the offer, sale and distribution of candy and candy products, was ordered to cease and desist from:⁵

1. Selling and distributing to wholesale dealers and jobbers, for resale to retail dealers and to retail dealers direct, candy so packed and assembled that sales of said candy to the general public are to be made, or may be made by means of a lottery, gaming device or gift enterprise;

2. Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers, packages or assortments of candy which are used, or may be used, without alteration or rearrangement of the contents, of such packages or assortments, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy or candy products contained in said assortments to the public;

3. Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers, assortments of candy, together with a device commonly called a "push card", or a device commonly called a "punch board", for use or which may be used in distribution or selling said candy to the public at retail;

4. Furnishing to retail and wholesale dealers and jobbers a device, commonly called a "push card", or a device commonly called a "punch board" either with packages or assortments of candy or candy products, or separately bearing a legend or legends, or statements, informing the purchasing public that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device or gift enterprise.

United States v. Sweets Co. of America, Inc., United States District Court for New Jersey; judgment for \$1,000 satisfied Dec. 29, 1942.

Sweets Co. of America, Inc., its representatives, etc., in connection with the offering for sale, sale and distribution of candy, had been ordered by the Commission to cease and desist from:⁶

1. Selling and distributing candy so packed and assembled that sales of such candy to the general public are to be made or are likely to be made by means of a lottery, gambling device, or gift enterprise;

⁵ Docket 2621, Dec. 31, 1936; 24 F. T. C. 343.

⁶ Docket 2959, May 25, 1940; 30 F. T. C. 1299.

2. Supplying to or placing in the hands of dealers, packages or assortments of candy which are used or which are likely to be used to conduct a lottery, a gambling device, or gift enterprise in the sale or distribution of said candy contained in the same packages or assortments to the public;

3. Supplying to or placing in the hands of dealers for sale to the public packages or assortments of candy composed of individually wrapped pieces of candy of uniform size and shape and of different colors, together with larger pieces of candy or any other merchandise, which said larger pieces of candy or other merchandise are to be or are likely to be given as prizes to the purchasers procuring pieces of said candy of a particular color.



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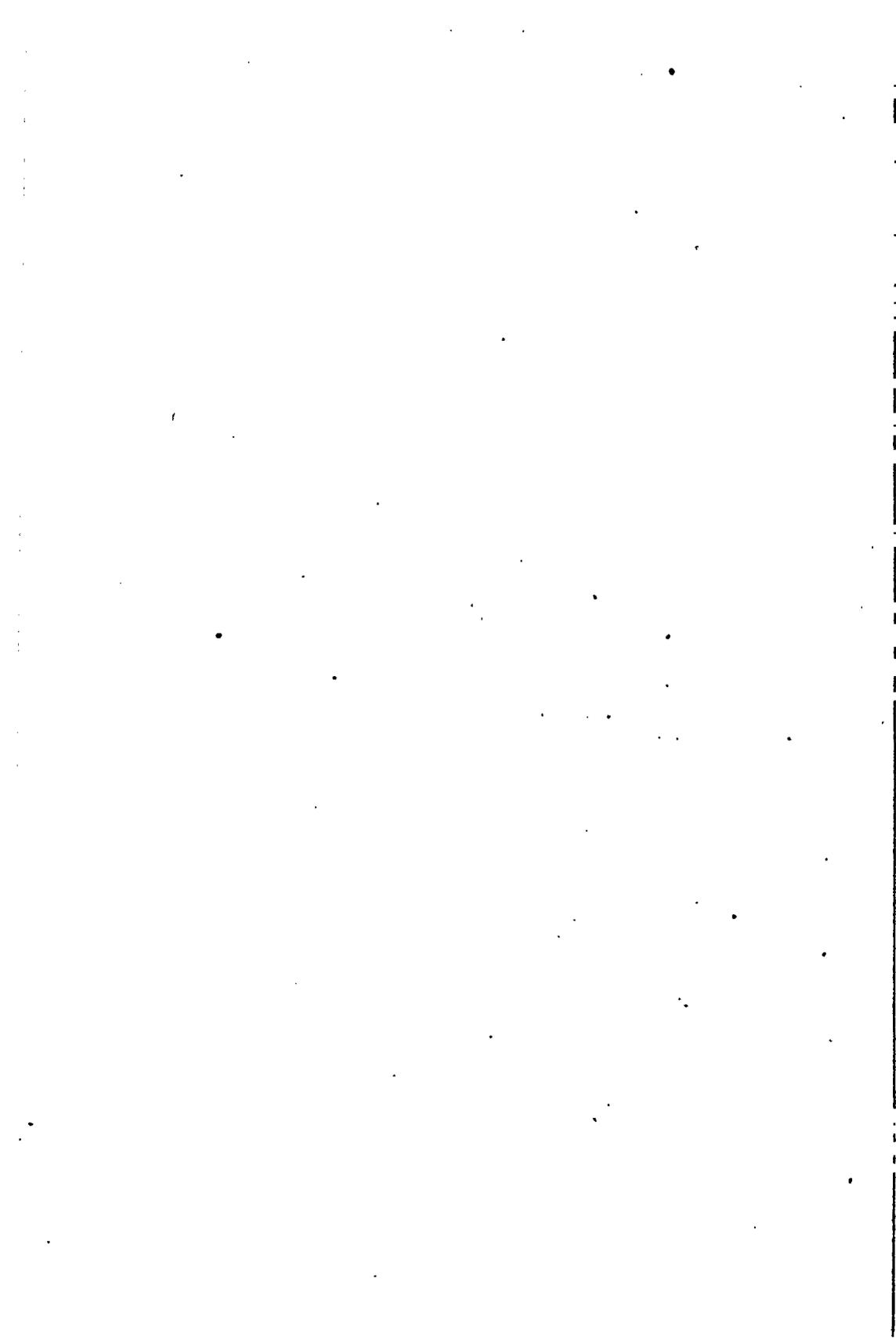
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Misrepresenting business status, advantages or connections.	
Misrepresenting directly or orally by self or representatives.	
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Misrepresenting product.	
Misrepresenting quantity of product.	
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Advertising falsely or misleadingly:

As to—

Agents or representatives—

Earnings or profits..... 896 (3591), 909, 937 (03085)

Allments and symptoms, generally..... 873, 885, 890, 893 (3588)

Army standards conformance..... 904 (03025)

¹ Page reference to stipulations of the radio and periodical division are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number of the stipulation, e. g., "01," "02," etc.

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Through depictions.....	850 (3532)

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Identity.....	930 (03072)
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Army.....	856 (3539)
Chemists.....	929 (03069)
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Navy.....	856 (3539)
New York Board of Education.....	859 (3545)
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U. S. Department of Agriculture.....	904 (03023)
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Insecticidal, vermicidal or related-----	843 (3520), 866 (3552), 871, 902 (02675)
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Medicinal, therapeutic, remedial and healthful-----	839 (3513), 840 (3516), 853, 859 (3546), 862, 867, 873, 874 (3564), 878, 879, 883, 885, 890, 893 (3587, 3588), 900, 901 (01778, 02387), 902 (03020), 905 (03026), 908 (03030, 03032), 909, 911 (03036), 912, 913 (03043), 915 (03044, 03046), 916 (03048), 919 (03053), 921 (03054, 03055), 922 (03056), 923 (03058), 924, 925 (03061), 926 (03063, 03064), 927, 928 (03066, 03067), 929 (03069), 930 (03071, 931 (03074), 932, 933 (03076, 934 (03079), 936, 937 (03085), 938 (03087).
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(03032), 913 (03042), 915 (03046), 919 (03053), 921 (03055), 924,	
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867, 873, 878, 885, 890, 893 (3588), 901 (01778), 938 (03086, 03087)	
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Purchasing.....	868, 869 (3555, 3556)
Size.....	884 (3578)
By depictions.....	881 (3573)
Source or origin—	
Maker.....	904 (03025)
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846 (3527), 874 (3562), 876, 888	
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Army or Navy.....	904 (03025)
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U. S. Government.....	885
Success, use or standing of product.....	848 (3530),
856 (3540), 902 (02692), 904 (03024), 916 (03047), 934 (03079)	
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857, 866 (3551), 887, 889 (3583), 896 (3591), 904 (03025), 917	
(03050).	
Testimonials.....	926 (03064)
Tests.....	910 (03035)
Chemist.....	929 (03069)
Termite Investigations Committee.....	843 (3520)
U. S. Government Agencies.....	854
University of Wisconsin.....	893 (3588)
Unique nature or advantages of product.....	881 (3572),
896 (3591), 902 (02692), 903 (03022), 904 (03024), 911 (03038),	
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Through—

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As to—

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Dealer being—	
Chemist.....	871
Manufacturer.....	849, 858 (3544), 875, 876, 884 (3577)
Dealer owning or operating laboratories..	833, 902 (03020), 919 (03053)
Government connection.....	856 (3539)
Nature of business.....	857
Private business being educational organization.....	859 (3545)
Source or origin—	
Maker.....	904 (03025)
Place.....	930 (03070)

Claiming or using indorsements or testimonials falsely or misleadingly:

As to or from—

Agriculture college.....	934 (03078)
Army.....	856 (3539)
Chemist.....	929 (03069)
Navy.....	856 (3539)
New York Board of Education.....	859 (3545)
Office of Civilian Defense.....	856 (3539)
Physicians and surgeons.....	883
Public Health authorities.....	901 (02387)
U. S. Department of Agriculture.....	904 (03023)
U. S. Government.....	892
Users, in general.....	926 (03064)

Disparaging or misrepresenting competitors or their products:

Competitors—

In general.....	848 (3530)
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Products—

As to—

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