

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, ORDERS, AND STIPULATIONS

JANUARY 1, 1943, TO JUNE 30, 1943

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**MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF
JUNE 30, 1943**

GARLAND S. FERGUSON, *Chairman.*

Took oath of office November 14, 1927,² January 9, 1928, September 20, 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

WILLIAM A. AYRES.

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

ROBERT E. FREEB.

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

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

¹ Second term.

² Recess appointment.

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CONTENTS

	Page
Members of the Commission.....	II
Table of cases reported.....	VII
Table of stipulations reported.....	XIII
Table of cases in which petitions for review of the orders of the Commission have been filed in the circuit courts of appeals.....	XIX
Table of court cases, Vols. 1-36.....	XXI
Cases in which cease and desist orders have been entered.....	1
Cases in which closing, discontinuing, dismissing, or vacating orders have been entered.....	1003
Stipulations:	
General.....	1007
False, misleading, and fraudulent advertising.....	1081
Decisions of the courts in cases instituted against or by the Commission..	1101
Pond's Extract Co.....	1101
International Parts Corp.....	1102
Bockenstette et al.....	1106
Salt Producers Ass'n et al.....	1110
Grand Rapids Furniture Co.....	1118
Jergens-Woodbury Sales Corp.....	1119
De Forest's Training, Inc.....	1122
A. E. Staley Mfg. Co. et al.....	1126
Globe Printing Co. (Morris Aron et al.).....	1130
DeLuxe Products Co., etc. (Alvin B. Wolf).....	1135
Sebrone Co. et al.....	1142
The Wire Rope and Strand Mfrs. Ass'n, Inc.....	1146
Miles Laboratories, Inc.....	1148
Philip R. Park, Inc.....	1155
J. B. Lippincott Co.....	1158
American Medicinal Products, Inc. et al.....	1167
Penalty proceedings.....	1171
U. S. v. Wilson Chemical Co., Inc.....	1171
U. S. v. Cornelius P. Van Schaack, Jr., etc.....	1171
U. S. v. Melster Candy Co.....	1173
U. S. v. Hiram Barber, etc.....	1174
U. S. v. The E. R. Page Co., Inc.....	1175
U. S. v. American Television Institute, Inc.....	1175
Table of commodities:	
Desist orders.....	1177
Stipulations.....	1181
Index:	
Desist orders.....	1191
Stipulations.....	1211

TABLE OF CASES

[The names in all CAPITALS refer to cases in which orders to cease and desist have been entered by the Commission, and which are reported in full in this volume. The names in *italics* refer to cases in which the Commission has entered orders of discontinuance or dismissal, orders closing case, or vacating and reopening orders]

Name	Page
A. & M. KARAGHEUSIAN, INC.....	446
ALACHUZOS CO., D. M.....	202
ALBEE STUDIO (G. S. Proper doing business as).....	260
ALFRED KOHLBERG, INC.....	142
ALLOY SECTION OF NATIONAL ELECTRICAL MANUFACTURERS ASS'N, ELECTRICAL, ET AL.....	336
ALMA'S HOME MADE CANDIES (Mrs. Alma Loughran et al. doing business as).....	885
<i>America-Chiffon Co.</i> (Scott Products Co. doing business as).....	1004
AMERICAN INDUSTRIAL RUBBER CO. (doing business as Nu-Tred Tire Agency, etc.), ET AL.....	232
AMERICAN MEMORIAL CO.....	180
ANASTASOFF, PETER, ET AL. (doing business as Purity Candy Co.).....	18
ASSOCIATED ADVERTISING AGENCY, INC., ET AL.....	696
ASSOCIATED DISTRIBUTORS, INC. ET AL.....	756
ASSOCIATED LABORATORIES (Milton Irwin et al. doing business as).....	626
ATKINS, FRANK D., ET AL.....	207
ATMORAY, INC. ET AL.....	457
ATMOZONE.....	457
BENSON & DALL, INC. ET AL.....	300
BERG, DR. WALTER G., ET AL. (doing business as Associated Laboratories).....	626
BLAKER, O. F., ET AL.....	148
BOX MANUFACTURERS ASS'N, GARMENT, ET AL.....	488
BOYER'S CANDY, LEE.....	575
BRANCH & CO., INC., FRATELLI.....	875
BRANCH INSTITUTE OF ENGINEERING AND SCIENCE, JOSEPH G.....	1
BRANDENBURG, CHARLOTTE.....	315
BRILL, ISAAC S., ET AL. (doing business as Gallant Trading Co.).....	470
BRISTOL-MYERS CO.....	707
BUREAU OF RESEARCH, RECLASSIFICATION DEPARTMENT (Leo Greenburg doing business as), ET AL.....	520
CASTLE CO., INC.....	331
CHAMPION RUBBER CO., ETC. (American Industrial Rubber Co. doing business as), ET AL.....	232
CHARLOTTE NOVELTY CO.....	738
COHLER, ARTHUR, ET AL (doing business as Stetson Felt Mills).....	651
CONWAY TAILORS (Ben Kottenbrook doing business as).....	835
CRAIG, THEOPHILUS J.....	90
DIAZ, EDMUND, ET AL.....	764

Name	Page
D. M. ALACHUZOS CO.....	202
DOMESTIC DIATHERMY CO. (Max E. Heyman et al. doing business as).....	920
DORFMAN, MEYER, ET AL. (doing business as Stetson Felt Mills)...	651
DOROTHY GRAY, LTD. ET AL.....	911
DUO-TINT BULB & BATTERY CO., INC. ET AL.....	749
<i>Eastern Herb Co., The</i> (Robert T. K. Hee doing business as).....	1003
EBERHARD, JOHN F., ET AL.....	764
ELECTRICAL ALLOY SECTION OF NATIONAL ELECTRICAL MANUFACTURERS ASS'N ET AL.....	336
EMPIRE PEAT SOIL SPONGE CO.....	996
ERDLEY, JOHN F. (doing business as Erdley Hatcheries), ET AL.....	421
F. A. STUART CO. ET AL.....	300
FERBER, ARTHUR H. (doing business as The Ferbo Co.).....	118
FERBO CO., THE (Arthur H. Ferber doing business as).....	118
FRANKLIN SALES CO. (Myron Trotsky doing business as).....	659
FRATELLI BRANCA & CO., INC.....	875
FREEDOM CHEMICAL CO., INC.....	942
GALLANT TRADING CO. (Herman A. Gallant et al. doing business as)...	470
GALLIA LABORATORIES, INC. ET AL.....	933
GARMENT BOX MANUFACTURERS ASS'N ET AL.....	488
<i>General Electric Co.</i>	1004
GEORGE & THOMAS CONE CO.....	98
GOLDENBERG, MILTON, ET AL.....	612
GRABOSKY BROTHERS.....	477
GRAND RAPIDS FURNITURE FACTORIES, INC., S. & M., ETC.....	162
GRAND RAPIDS SHOWROOMS, ETC.....	162
GRAY, LTD., DOROTHY, ET AL.....	911
GREENBERG, LEO (doing business as Bureau of Research, Reclassification Department), ET AL.....	520
GREENING NURSERY CO.....	273
GUARDIAN SERVICE BUREAU, ETC. (Harold M. May doing business as).....	132
HARLEM CO. (Paul J. Simmons doing business as).....	226
HARVESTER TIRE SALES, ETC. (American Industrial Rubber Co. doing business as), ET AL.....	232
HAVNER, HARRISON H., ET AL.....	541
HECHT CO., ETC.....	830
<i>Hee, Robert T. K.</i> (doing business as The Eastern Herb Co.).....	1003
HEYMAN, MAX E., ET AL. (doing business as Domestic Diathermy Co.).....	920
HOLLYWOOD MAGIC GARMENT CO.....	110
HOWE AND CO.....	685
HUNT, JOHN S., ET AL.....	541
HUSTEAD, CHARLES D. (doing business as Terminal Messenger Service, etc.).....	594
HYGIENIC CORPORATION OF AMERICA ET AL.....	504
IRWIN, MILTON, ET AL. (doing business as Associated Laboratories)...	626
IVERSON, PHILIP E., ET AL.....	541
JACOB SIEGEL CO.....	563
JARET, MAUDE S., ET AL. (doing business as Domestic Diathermy Co.).....	920

Name	Page
J. A. STRANSKY MANUFACTURING CO.....	552
JOHN F. TROMMER, INC.....	577
JOHN LUCAS & CO., INC. ET AL.....	25
JOHNSON SMITH & CO. (Alfred Johnson Smith et al. doing business as).....	245
JOSPEH G. BRANCH INSTITUTE OF ENGINEERING AND SCIENCE.....	1
JOSTEN MANUFACTURING CO.....	307
JOURNAL OF LIVING PUBLISHING CORP., THE, ET AL.....	170
KADET ART & FRAME CO. (Benjamin Kadet et al. doing business as), ET AL.....	977
KAIDEN, FRANCES, ET AL.....	892
KAIDEN-KAZANJIAN STUDIOS, INC., ETC., ET AL.....	892
KARAGHEUSIAN, INC., A. & M.....	446
KARASTAN RUG MILLS (Marshall Field & Co. doing business as).....	411
KAY, M. L., ET AL. (doing business as Latta Cream).....	905
KAZANJIAN, ARAM, ET AL.....	892
KEAVNEY, WALTER J., ET AL.....	764
KEYSTONE NEWS & PHOTO SERVICE, ETC., ET AL.....	892
KIDDE & CO., INC., WALTER.....	431
KLEIN, VICTOR (doing business as United Art Studios), ET AL.....	977
KOHLBERG, INC., ALFRED.....	142
KOLA ASTIER CORP. ET AL.....	933
KOTTENBROOK, BEN (doing business as Conway Tailors).....	835
L. & S. TIRE DISTRIBUTORS, ETC. (American Industrial Rubber Co. doing business as), ET AL.....	232
LATTA CREAM (M. L. Kay et al. doing business as).....	905
LEE BOYER'S CANDY.....	575
LEHN & FINK PRODUCTS CORP. ET AL.....	911
LEONARD CUSTOM TAILORS CO., THE, ETC.....	105
LEWIS, OLIN K., ET AL.....	232
LINDLAHR, VICTOR H., ET AL.....	170
LINEN SUPPLY BOARD OF TRADE OF NEW JERSEY ET AL.....	382
LONDON TOBACCO CO. (Jacob Moss doing business as).....	282
LOUGHRAN, MRS. ALMA, ET AL. (doing business as Alma's Home Made Candies).....	885
LOWE BROTHERS CO., THE, ET AL.....	25
LUCAS & CO. INC., JOHN, ET AL.....	25
MAGNETIC RAY CO., ETC. (Frank B. Moran doing business as).....	866
MARSHALL FIELD & CO. (doing business as Karastan Rug Mills).....	411
MASTER ARTISTS' ASS'N, INC. (Eugene M. Woolard doing business as), ET AL.....	365
MAY, HAROLD M. (doing business as United Inheritance Bureau, etc.).....	132
McNEIL DRUG CO., INC., ET AL.....	696
MILLS, DR. DAVID W., ET AL. (doing business as Associated Labora- tories).....	626
MODERNISTIC CANDIES, INC., ET AL.....	822
MONO SERVICE CO.....	125
MONTGOMERY WARD & CO. ET AL.....	421
MORAN, FRANK B. (doing business as Magnetic Ray Co., etc.).....	866
MOSS, INC., SAMUEL H.....	640
MOSS, JACOB (doing business as London Tobacco Co.).....	282
NASH BROTHERS DRUG CO.....	668

Name	Page
NATIONAL ADMINISTRATORS (Dan Trainor doing business as), ET AL.....	721
NATIONAL ASSOCIATION OF SANITARY MILK BOTTLE CLOS- URE MANUFACTURERS, ET AL.....	841
NATIONAL ELECTRICAL MANUFACTURERS ASS'N, ELEC- TRICAL ALLOY SECTION OF, ET AL.....	336
NATIONAL INHERITANCE SERVICE (Herbert L. Ross, doing busi- ness as), ET AL.....	148
NEO GRAVURE PRINTING CO., INC. ET AL.....	773
NORTHWEST FILM AD SERVICE, INC. ET AL.....	207
NU-TRED TIRE AGENCY, ETC. (American Industrial Rubber Co. doing business as), ET AL.....	232
O'CAMP, HUMBERT, ET AL. (doing business as Latta Cream).....	905
<i>Pacific Coast Paper Mills, Inc.</i>	1004
PARFUM L'ORLE, INC.....	289
PARKER McCORRY MANUFACTURING CO.....	587
PARK, INC., PHILIP R., ET AL.....	541
PASADENA PRODUCTS, INC.....	195
PERGANDE INSTITUTE.....	215
PHILIP R. PARK, INC. ET AL.....	541
PIONEER INHERITANCE SERVICE, ETC. (Charles D. Husted doing business as).....	594
POW-A-TAN MEDICINE CO.....	531
PREMIER CONE BAKING CO., THE.....	950
PROPER, G. S. (doing business as Albee Studio).....	260
PURITY CANDY CO. (Peter Anastasoff et al. doing business as).....	18
PURITY PRODUCTS, INC. ET AL.....	170
RICHMAN BROTHERS CO., THE.....	482
ROSS, HERBERT L. (doing business as National Inheritance Service), ET AL.....	148
SALLY'S FURS, INC.....	325
SAMUEL H. MOSS, INC.....	640
S. & M. GRAND RAPIDS FURNITURE FACTORIES, INC., ETC.....	162
<i>Scott Products Co.</i> (doing business as America-Chiffon Co.).....	1004
SCREEN BROADCAST CORP. ET AL.....	957
SHERWIN WILLIAMS CO., THE, ET AL.....	25
SIEGEL CO., JACOB.....	563
SIMMONS, PAUL J. (doing business as Harlem Co.).....	226
SMITH, ALFRED JOHNSON, ET AL. (doing business as Johnson Smith & Co.).....	245
SMITH, E. F., ET AL.....	232
SPICER, WILLIAM EDGAR, ET AL.....	520
STETSON FELT MILLS (Meyer Dorfman et al. doing business as).....	651
"STRAND-SEALED HOSIERY CO.," ETC.....	76
STRANSKY MANUFACTURING CO., J. A.....	552
STUART CO., F. A., ET AL.....	300
TENENBAUM, MANNY G., ET AL.....	232
TERMINAL MESSENGER SERVICE, ETC. (Charles D. Husted doing business as).....	594
TRAINOR, DAN (doing business as National Administrators), ET AL....	721
TRILLING, HAROLD, ET AL.....	232

TABLE OF CASES

XI

Name	Page
TROMMER, INC., JOHN F.....	577
TROTCKY, MYRON (doing business as Franklin Sales Co.).....	659
<i>Tuey, D. K</i>	1003
UNITED ART STUDIOS (Victor Klein doing business as), ET AL.....	977
UNITED INHERITANCE BUREAU, ETC. (Harold M. May doing business as).....	132
UNITED STATES MARBLE & GRANITE CO. (Asa L. Wooten doing business as).....	188
WALTER KIDDE & CO., INC.....	431
WESTVILLE REFINERY, INC.....	402
WIRE ROPE & STRAND MANUFACTURERS ASS'N, INC., THE, ET AL.....	790
WISCONSIN DELUXE DOLL & DRESS CO., ETC.....	250
WOOLARD, EUGENE M. (doing business as Master Artists' Ass'n, Inc.), ET AL.....	365
WOOTEN, ASA L. (doing business as United States Marble & Granite Co.)..	188
WORLD'S-STAR-MALLOCH, INC. ETC.....	76

1. The first part of the paper discusses the importance of the study of the history of the United States. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The paper then discusses the importance of the study of the history of the United States in the context of the world.

2. The second part of the paper discusses the importance of the study of the history of the United States in the context of the world. It is argued that the study of the history of the United States is essential for a full understanding of the country and its people. The paper then discusses the importance of the study of the history of the United States in the context of the world.

TABLE OF STIPULATIONS

[Page references having to do with that class of false, misleading and fraudulent advertising matters dealt with through the Commission's radio and periodical division are in *italics*]

Name	Page
Ace Fastener Corp.....	1051
A. C. Horn Co.....	1033
Adrian Bauer Advertising Agency.....	1095
A. Freedman & Sons, Inc.....	1050, 1052
Airport Management, Inc. (Western Air College, etc.).....	1071
Ajax Tool & Die Co.....	1024
Alpine Children's Dress Co.....	1022
American Watchman's Time Detector Co., etc.....	1008
A. Schreter & Sons, Inc.....	1057
Associated Laboratories, Inc. (Vitamin-Quota).....	1051
Bates Shoe Co.....	1010
Bauer, Adrian, et al. (Adrian Bauer Advertising Agency).....	1095
Beck, R. E. (United Sales Co.).....	1034
Belvedere Products.....	1079
Benson & Dall, Inc. et al.....	1088
Benson, Harold, et al. (Universal Selling Co.).....	1007
Bernat & Sons Co., Emile.....	1038
Bevill Co., I. L.....	1070
Bloomington Brothers, Inc.....	1068
Board of Examinations and Management of Huron, S. D., et al.....	1025
Bond Stores, Inc.....	1035
Boomer's Mail Order Service.....	1088
Breosan Laboratories.....	1081
Brown & Williamson Tobacco Corp. et al.....	1099
Browning King Uniform Corp.....	1028
Bryant, Inc., Lane.....	1041
Buenger Pharmacal Co.....	1087
Cabinet Manufacturing Co. et al.....	1097
Cagnazzi, Humbert, et al. (Nem Co.).....	1086
Caldwell, Inc., Dr. W. B., et al.....	1090
Callery, George L. (Power Associates).....	1076
Carroll, Lillian K., et al. (Universal Selling Co.).....	1007
Carter, L. G., et al. (FaSet Co.).....	1095
Central Pharmacy, Inc.....	1096
Chartered University of America et al.....	1025
Chase, Winslow W. (The Thaxly Co.).....	1082
Chicago Mail Order Co.....	1089
Clark, Thomas, et al. (Grove Products).....	1085
Cleanette Products Co. et al.....	1066
Clear Spring Hatchery.....	1072
Clifton, A. T. (Clifton Manufacturing Co.).....	1065
Columbia Book Publishing Co. et al.....	1061

Name	Page
Consolidated Royal Chemical Corp. et al.....	1088
Cotman, Truman P. (National Rat and Mouse Exterminator Co.).....	1027
Craftsman Sales Co., etc.....	1078
Cravenette Co., U. S. A.....	1035
Crawford-Austin Manufacturing Co.....	1064
Crawford Manufacturing Co., Inc.....	1063
Crosse & Blackwell Co., The.....	1028
Davis, Willie, et al. (Grove Products).....	1085
Dr. Propper Manufacturing Co.....	1013
Donna Kiddie Togs.....	1021
Dowdy, General Scott.....	1046
Drew, Leslie A., et al. (Kirkgasser-Drew).....	1094
Dyke, A. O. (Nu Yorker).....	1030
Edelman, Charles.....	1022
Electrovox Co.....	1049
Elfco Service.....	1092
Emile Bernat & Sons Co.....	1038
English, Dr. V. P.....	1083
Fantus, Ernest L. (Elfco Service).....	1092
FaSet Co.....	1095
Ferry-Hanly Co.....	1093
Flamingo Salcs Co. et al.....	1056
Francis H. Leggett & Co.....	1010
Frantz, Claude C. (Cleanette Products Co.), et al.....	1066
Freedman & Sons, Inc., A.....	1050, 1052
Freitag & Sons, Inc.....	1015
Fulton Bag & Cotton Mills.....	1065
Funk & Wagnalls Co.....	1069
Gee, Suey Chu (Suey Chee Herb Co.).....	1041
George H. Lee Co.....	1091
Gernsback, Hugo.....	1074
Gly-Cas Medicine Co.....	1095
Goldbacher, Milt, et al.....	1055
Goldberg, V. M., et al. (Hoosier Tarpaulin & Canvas Goods Co.).....	1064
Goldman, Abraham, et al. (Donna Kiddie Togs).....	1021
Granite Textile Mills, Inc.....	1009
Great Northern Chemical Co., Inc.....	1011
Great Western Paint Manufacturing Corp. et al.....	1077
Grey's Laboratories, Peter, etc.....	1067
Grove Products.....	1085
G. S. Dowdy Sales Co.....	1046
Haas, Henry, et al. (Adrian Bauer Advertising Agency).....	1095
Hagen, Isiah O., et al.....	1025
Hairtone Co., etc.....	1037
Hairtone Laboratories, etc.....	1037
Hale Drug Co., The, et al.....	1075
Hanger, Inc., J. E.....	1042, 1044
Hannum, G. Henry, et al. (Universal Selling Co.).....	1007
Harold Lifton Co.....	1026
Harvest House.....	1095
Heinrichson's Natural Food Co.....	1091
Henry, Florence English (Dr. V. P. English).....	1083

Name	Page
Hershey Mfg. Co. et al.....	1094
Hicks Rubber Co. et al.....	1055
Hirshmaur Coats, Inc.....	1039
H. M. Kiesewetter Advertising Agency, Inc., The, et al.....	1089
Holly Liquefier Sales.....	1016
Hossier Tarpaulin & Canvas Goods Co.....	1064
Horn Co., A. C.....	1033
Howe, R. Q. (R. Q. Laboratories).....	1098
I. L. Bevill Co.....	1070
International Products Co., Inc.....	1050
Jacobsen, William H.....	1020
Jaffe, Eugene (Craftsman Sales Co., etc.).....	1078
J. E. Hanger, Inc.....	1042, 1044
Jessop Steel Co.....	1035
J. H. Thorp & Co., Inc.....	1032
Johns, Julia W., et al.....	1025
Johns, W. A., et al.....	1025
Judicial Publishing Co. et al.....	1061
Kalbach, R. B., et al. (FaSet Co.).....	1095
Kay Preparations Co., Inc.....	1053
Kiesewetter Advertising Agency, Inc., The H. M., et al.....	1089
King Fig Plantation.....	1073
Kirkgasser, George J., et al. (Kirkgasser-Drew).....	1094
Klein, Berthold (United Textile & Silk Co.).....	1067
Knemark Manufacturing Co., Inc.....	1091
Koolish, Philip Harry, et al. (Monarek Camera Co.).....	1096
Kovac Laboratories, Inc.....	1046
Kroehler Manufacturing Co.....	1049
Krohn Sales Co. et al.....	1075
Kumfy Products, Inc.....	1068
Ladas, Steve, et al. (Min-O-Ral Products Co.).....	1023
Lane Bryant, Inc.....	1041
Langdale, Inc., R. Loran.....	1044
Laxo.....	1098
Lee Co., George H.....	1091
Leggett & Co., Francis H.....	1010
Leister, Frank B. (Clear Spring Hatchery).....	1072
Lentheric, Inc.....	1012
Leute, Walter C.....	1015
Levine, Benjamin H. (Harvest House).....	1095
Lewis, Alfred, et al. (Donna Kiddie Togs).....	1021
Lifton Co., Harold.....	1028
Lion Neckwear Co.....	1013
Lipson, Charles (National Academic Publications).....	1072
Literary Publications et al.....	1061
Lorr Laboratories et al.....	1089
Lublin, Howard (Republic Manufacturing & Supply Co.).....	1041
Mace Advertising Agency, Inc. et al.....	1097
Makers of Kal, Inc.....	1086
Martindale & Co., Thomas.....	1090
McGready, Pearle B. (United Automotive Manufacturing Co.).....	1029
Medical Council et al.....	1025

Name	Page
Milkmaid, Inc. et al.....	1089
Milton Weinberg Advertising Co.....	1056
Min-O-Ral Products Co.....	1023
Modern Cosmetics, Inc.....	1093
Monarck Camera Co.....	1096
Montello Granite Co.....	1007
Morse Magneto Clock Co., The, etc.....	1008
National Academic Publications.....	1072
National Paint & Color Co. et al.....	1077
National Rat and Mouse Exterminator Co.....	1027
National Solvent Corp.....	1066
Nem Co.....	1086
Nutrena Mills, Inc.....	1093
Nu Yorker.....	1030
Osco Motors Corp.....	1076
Paebar Co., The, et al.....	1061
Pater, Alan F. (The Paebar Co., etc.).....	1061
Patriotic Stamp Co.....	1057
Pedrini, Felix (King Fig Plantation).....	1073
Peter Grey's Laboratories, etc.....	1067
Pitegoff Brothers, Inc.....	1059
Plumb, R.....	1096
Pneumatic Institute Co.....	1031
Portnow, Julius (Pneumatic Institute Co.).....	1031
Power Associates.....	1076
Propper, Belle, et al (Dr. Propper Manufacturing Co.).....	1013
Republic Manufacturing & Supply Co.....	1041
Richman, Matilda (Hairtone Co., etc.).....	1037
R. Loran Langdale, Inc.....	1044
Rosalak, Boleslaw, et al. (Belvedere Products).....	1079
R. Q. Laboratories.....	1098
Russel M. Seeds Co., Inc., et al.....	1099
R. Wallace & Sons Manufacturing Co.....	1009
Salzman, Anthony (Union Mill Ends).....	1024
Schreter & Sons, Inc., A.....	1057
Schumann, Seymour, et al. (Dr. Propper Manufacturing Co.).....	1013
Seeds Co., Inc., Russel M., et al.....	1099
Sherman & Marquette, Inc.....	1090
Showalter, Rolla E., et al.....	1077
Sigel, Perdyce H. (Si-Oze Co.).....	1092
Simplex Time Recorder Co.....	1008
Si-Oze Co.....	1092
Smull, Aaron, et al. (Lion Neckwear Co.).....	1013
Spanapoulos, Olga, et al. (Min-O-Ral Products Co.).....	1023
Star Rubber Co., et al.....	1055
Sterling Sales Co., etc.....	1078
Sturzenegger, Paul (Breosan Laboratories).....	1081
Suey Chee Herb Co.....	1041
Thaxly Co., The.....	1082
Thomas, L. J. (The Vogue Co., etc.).....	1081
Thomas Martindale & Co.....	1090
Thorp & Co., Inc., J. H.....	1032
Topp, Samuel (Alpine Children's Dress Co.).....	1022

Name	Page
Torelli, Nelson, et al. (Nem Co.)	1086
Trotter & Son, W. E.	1072
Troy Chemical Co.	1093
Ultra Violet Ray Laboratories, Inc.	1069
Union Mill Ends	1024
United Automotive Manufacturing Co.	1029
United Sales Co.	1034
United Textile & Silk Co.	1067
Universal Selling Co.	1007
Visceglie, Gaetano, et al. (Nem Co.)	1088
Vitalex, Inc.	1085
Vitamin-Quota	1051
Vogue Co., The, etc.	1081
Vogue Eliminator Co., etc.	1081
Wallace & Sons Manufacturing Co., R.	1009
W. B. Caldwell, Inc., Dr., et al.	1090
Weinberg Advertising Co., Milton	1056
Weinberg, Bernard (Milton Weinberg Advertising Co.), et al.	1056
Weisfield & Goldberg, Inc.	1014
Western Air College, etc.	1071
Western Airport College Co., etc.	1071
Western Medical Corp.	1059
Western Welding Institute, etc.	1071
W. E. Trotter & Son	1072
Whinrey, Medora (Gly-Cas Medicine Co.)	1095
Who's Who Publishing Co., et al.	1061
Willens Co., Inc. (Patriotic Stamp Co.)	1057
Wills, Seremus (Hollywood Liquefier Sales)	1016
Yales, Milton E., et al.	1075
Zwanger, Benjamin (Laxo)	1098



**TABLE OF CASES IN WHICH PETITIONS FOR REVIEW OF
ORDERS OF THE COMMISSION HAVE BEEN FILED IN
THE UNITED STATES CIRCUIT COURTS OF APPEALS FROM
JANUARY 1, 1943, TO JUNE 30, 1943, INCLUSIVE**

Name	Vol.	Page
EUGENE RUSSELL JAFFE (Sterling Sales Co., etc.)-----	35	702
Petition for review filed in Circuit Court of Appeals for the Seventh Circuit on January 12, 1943.		
THE WIRE ROPE AND STRAND MANUFACTURERS ASS'N, INC. ET AL-----	35,	756,
	36	790
Petition for review filed in Circuit Court of Appeals for the Fourth Circuit on February 5, 1943, by the Association, was dismissed May 29, 1943, following modified order, and dis- missal of the complaint as to the Association on May 25.		
Petition for review filed in Circuit Court of Appeals for the Fourth Circuit by American Chain & Cable Co. et al. on February 5, 1943, and, as amended, on July 30.		
JOSEPH J. BRANCH INSTITUTE OF ENGINEERING AND SCIENCE-----	36	1
Petition for review filed in Circuit Court of Appeals for the Seventh Circuit on February 15, 1943.		
UNITED STATES MALTSTERS ASS'N ET AL-----	35	797
Petition for review filed in Circuit Court of Appeals for the Seventh Circuit on February 26, 1943.		
GREENING NURSERY CO-----	36	273
Petition for review filed in Circuit Court of Appeals for the Sixth Circuit on May 7, 1943. Petition withdrawn and appeal dismissed on stipulation of the parties September 1, 1943.		
JACOB SIEGEL CO-----	36	563
Petition for review filed in Circuit Court of Appeals for the Third Circuit on June 15, 1943.		
ASSOCIATED LABORATORIES-----	36	626
Petition for review filed in Circuit Court of Appeals for the Eighth Circuit on June 24, 1943.		
SAMUEL H. MOSS, INC-----	36	640
Petition for review filed in Circuit Court of Appeals for the Second Circuit on June 29, 1943.		

TABLE OF COURT CASES IN VOLUMES 1-36, INCLUSIVE¹

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, 1938, 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.

Ace Auto Supply Co., The, et al.....	(C. C. A.) 32-1891.
Advance Paint Co.....	(C. C. A.) "Memoranda," 20-739.
A. E. Staley Mfg. Co., et al.....	(C. C. A.) 36-1126.
135 F. (2d) 453.	
Alberty, Adah.....	(C. C. A.) 32-1871.
118 F. (2d) 669.	
Algoma Lumber Co., et al. ²	(C. C. A.) 16-657, 17-669; (S. C.)
56 F. (2d) 774; 64 F. (2d) 618; 291 U. S.	18-669.
67; (54 S. Ct. 315).	
Allen B. Wrisley Co., et al.....	(C. C. A.) 31-1815.
113 F. (2d) 437.	
Alle-Rhume Remedy Co., Inc., et al.....	(C. C. A.) 30-1613.
Allied Pharmacal Co., Inc., etc.....	(D. C.) 31-1905.
Aluminum Co. of America.....	(C. C. A.) 5-529, 7-618.
284 Fed. 401; 299 Fed. 361.	
Amber-Ita (Ward J. Miller).....	(C. C. A.) 21-1223.
A. McLean & Son, et al.....	(C. C. A.) 22-1149, 26-1501; 31-
84 F. (2d) 910; 94 F. (2d) 802.	1828.
American Army and Navy Stores, Inc.....	(C. A. for D. C.) 23-1392.
American Candy Co.....	(C. C. A.) 27-1683.
97 F. (2d) 1001.	
American College, et al.....	(C. C. A.) 30-1674.
American Field Seed Co., et al.....	(C. C. A.) 30-1648.
American Medicinal Products, Inc., et al.....	(D. C.) 30-1683; (C. C. A.) 36-
133 F. (2d) 426.	1167.
American Snuff Co.....	(C. C. A.) 13-607.
38 F. (2d) 547.	

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.

- American Steel and Wire Co., of N. J., The, (C. C. A.) 34-1862.
et al.
- American Television Institute, Inc., U. S. v. (D. C.) 36-1175.
- American Tobacco Co. (D. C.) 5-558; (S. C.) 7-599;
283 Fed. 999; 264 U. S. 298 (44 S. Ct. (C. C. A.) 9-653; (S. C.) 11-
336); 9 F. (2d) 570; 274 U. S. 543 (47 668.
S. Ct. 663).
- America's Medicine, etc. (Harry S. Benham) (D. C.) 29-1629.
- Anchor Hocking Glass Corp., Lancaster, Ohio, (C. C. A.) 34-1789.
et al.
- 124 F. (2d) 187.
- Antisepto Products Co., etc. (Edward L. Jen- (D. C.) 29-1637.
kins et al.).
- Ardelle, Inc., Helen. (C. C. A.) 28-1894.
101 F. (2d) 718.
- Arkansas Wholesale Grocers Ass'n. (C. C. A.) 11-646.
18 F. (2d) 866.
- Armand Co., Inc. et al. (C. C. A.) 21-1202, 22-1155.
78 F. (2d) 707; 84 F. (2d) 973.
- Armour & Co.³ (C. C. A.) "Memoranda," 20-745
- Army and Navy Trading Co. (C. A. of D. C.) 24-1601.
88 F. (2d) 776.
- Arnold Stone Co.⁴ (C. C. A.) 15-606.
49 F. (2d) 1017.
- Aronberg, Earl (Positive Products Co., etc.) (D. C.) 29-1634; (C. C. A.) 35-
132 F. (2d) 165. 979.
- Aron, Morris, et al. (Globe Printing Co.) (D. C.) 36-1130.
50 F. Supp. 289.
- Arrow-Hart & Hegeman Electric Co. (C. C. A.) 17-658, 683; (S. C.)
63 F. (2d) 108; 65 F. (2d) 336; 291 U. S. 18-691.
587 (54 S. Ct. 532).
- Artloom Corp.⁵ (C. C. A.) 18-680.
69 F. (2d) 36.
- Artloom Corp. v. National Better Business (D. C.) footnote, 15-597.
Bureau et al.
- 48 F. (2d) 897.
- Associated News Photographic Service, Inc. (C. C. A.) 35-978.
et al.
- Atlantic & Pacific Tea Co., The Great. (C. C. A.) 29-1591.
106 F. (2d) 667.
- Atlas Health Appliance Co. (Jacob L. Gold- (D. C.) 31-1897.
man).
- Avery Salt Co. (C. C. A.) 30-1667.
- Aviation Institute of U. S. A., Inc. (C. A. of D. C.) 21-1219.
- Ayer, Harriet Hubbard, Inc.⁶ (C. C. A.) 10-754.
15 F. (2d) 274.
- Balditt, Rene P. (Clito Co.) (D. C.) 31-1894.
- Balme, Paul. (C. C. A.) 11-717.
23 F. (2d) 615.

³ Interlocutory order. See also S. & D. 721.

⁴ For interlocutory order, see "Memoranda," 28-1065 or 1938 S. & D. 485.

⁵ For interlocutory matter, see "Memoranda," 28-1068 or 1938 S. & D. 489.

⁶ For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

Baltimore Grain Co. et al.....	(D. C.) 5-578; (S. C.) 8-632. 284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).
Baltimore Paint & Color Works, Inc.....	(C. C. A.) 14-675. 41 F. (2d) 474.
Barager-Webster Co.....	(C. C. A.) 26-1495. 95 F. (2d) 1000.
Barber, Hiram (Motor Equipment Specialty Co.), U. S. v.	(D. C.) 36-1174.
Basic Products Co.....	(D. C.) 3-542. 260 Fed. 472.
Battle Creek Appliance Co., Ltd.....	(C. C. A.) 21-1220.
Bayuk Cigars, Inc.....	(C. C. A.) 14-679 (footnote), 708; 28-1958; 29-1574.
Bazelon, Mitchell A., et al. (Evans Novelty Co., etc.)	(C. C. A.) 34-1806.
Bear Mill Manufacturing Co., Inc.....	(C. C. A.) 27-1685. 98 F. (2d) 67.
Beech-Nut Packing Co.'.....	(C. C. A.) 2-556; (S. C.) 4-583. 264 Fed. 885; 257 U. S. 441 (42 S. Ct. 150).
Belmont Laboratories, Inc.....	(C. C. A.) 23-1941. 103 F. (2d) 538.
Bene & Sons, Inc., John.....	(C. C. A.) 7-612. 299 Fed. 468.
Benham, Harry S. (America's Medicines, etc.)	(D. C.) 29-1629.
Benham, Leland F. (The Zelle Co.).....	(D. C.) 29-1631.
Benton Announcements, Inc.....	(C. C. A.) 35-941. 130 F. (2d) 254.
Berkey & Gay Furniture Co. et al.....	(C. C. A.) 14-679. 42 F. (2d) 427.
Berry Seed Co. et al.....	(C. C. A.) 30-1649. 109 F. (2d) 1012.
Bethlehem Steel Co.....	(D. C.) (S. C. of D. C.) footnote, 3-543.
Biddle Purchasing Co. et al.....	(C. C. A.) 26-1511; 32-1840, 96 F. (2d) 687; 117 F. (2d) 29. 1867; 33-1796.
Blackstone Studios, Inc., et al.....	(C. C. A.) 35-978.
Block, Sol., et al. (Rittenhouse Candy Co.)	(C. C. A.) 26-1497.
Blumenthal, Sidney, et al. (Rittenhouse Candy Co.)	(C. C. A.) 26-1497.
Bob Hofeller Candy Co.....	(C. C. A.) 22-1138, 34-1842. 82 F. (2d) 647.
Bockenstette et al.....	(C. C. A.) 36-1106. 134 F. (2d) 369.
Bonita Co., The, et al.....	(C. C. A.) 22-1149; 31-1834. 84 F. (2d) 910.
Boulevard Candy Co.....	(C. C. A.) 35-955.
Bourjois, Inc., et al.....	(C. C. A.) 27-1706.
Boyer's Candy, Lee.....	(C. C. A.) 34-1857. 128 F. (2d) 261.
Brach & Sons, E. J.....	(C. C. A.) 29-1577.
Bradley, James J.....	(C. C. A.) 12-739. 31 F. (2d) 569.

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

Breakstone, Samuel ⁸	(C. C. A.) "Memoranda," 20-745.
Brecht Candy Co.....	(C. C. A.) 25-1701.
92 F. (2d) 1002.	
Broudo, Louis, et al. (Globe Printing Co.)....	(D. C.) 36-1130.
50 F. Supp. 289.	
Brown & Haley.....	(C. C. A.) 28-1894.
101 F. (2d) 718.	
Brown Fence & Wire Co.....	(C. C. A.) 17-680.
64 F. (2d) 934.	
Bruning Co., Inc., Charles, et al.....	(C. C. A.) 34-1865.
Bundy, Robert C. (The Jackson Sales Co.)....	(C. C. A.) 33-1819.
Bunte Brothers, Inc.....	(C. C. A.) 28-1959; 30-1650;
104 F. (2d) 996; 110 F. (2d) 412; 312 U. S.	(S. C.) 32-1848.
349 (61 S. Ct. 580).	
Butterick Co. et al. ⁹	(S. C. of D. C.) footnote, 3-542,
4 F. (2d) 910.	(C. C. A.) 8-602.
Butterick Publishing Co. et al.....	(C. C. A.) 23-1384.
85 F. (2d) 522.	
B-X Laboratories and Purity Products Co.	(D. C.) 29-1643; 30-1727.
(John Petrie), U. S. v.	
Caldwell, Inc., Dr. W. B.....	(C. C. A.) 30-1670.
111 F. (2d) 889.	
California Lumbermen's Council et al.....	(C. C. A.) 28-1954; 29-1568; 31-
103 F. (2d) 304; 104 F. (2d) 855; 115 F.	1870.
(2d) 178.	
California Rice Industry.....	(C. C. A.) 28-1912; 33-1779.
102 F. (2d) 716.	
Candymasters, Inc.....	(C. C. A.) 34-1807.
Canfield Oil Co.....	(C. C. A.) 4-542.
274 Fed. 571.	
Cannon v. U. S.....	(C. C. A.), footnote, 11-677.
19 F. (2d) 823.	
Canterbury Candy Makers, Inc.....	(C. C. A.) 28-1894.
101 F. (2d) 718.	
Capital Drug Co. (Max Caplan).....	(D. C.) 31-1900.
Caplan, Max (Capital Drug Co.).....	(D. C.) 31-1900.
Capon Water Co. et al.....	(C. C. A.) 29-1611.
107 F. (2d) 516.	
Cardinal Co., The (Charles L. Klapp).....	(D. C.) 29-1639.
Carey Mfg. Co., Philip, et al.....	(C. C. A.) 12-726.
29 F. (2d) 49.	
Carter Carburetor Corp.....	(C. C. A.) 31-1793.
112 F. (2d) 722.	
Casey Concession Co. (Louis Keller et al)....	(C. C. A.) 35-970.
132 F. (2d) 59.	
Cassoff, L. F.....	(C. C. A.) 13-612.
38 F. (2d) 790.	
Century Metalcraft Corp.....	(C. C. A.) 30-1676.
112 F. (2d) 443.	
Chamber of Commerce of Minneapolis et al. ¹⁰	(C. C. A.) 4-604; 10-687.
280 Fed. 45; 13 F. (2d) 673.	

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

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

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

Chanel, Inc.-----	(C. C. A.) 32-1866.
Chapman Health Products Co., The, et al.----	(D. C.) 30-1687.
Charles Bruning Co., Inc., et al.-----	(C. C. A.) 34-1865.
Charles N. Miller Co.-----	(C. C. A.) 27-1678.
97 F. (2d) 563.	
Chase & Sanborn (Moir, John, et al.) ¹¹ -----	(C. C. A.) 10-674.
12 F. (2d) 22.	
Chase Candy Co.-----	(C. C. A.) 26-1499.
97 F. (2d) 1002.	
Cherry, Albert T.-----	(C. C. A.) 33-1780.
121 F. (2d) 451.	
Chesapeake Distilling & Distributing Co.----	(D. C.) 32-1909.
Chicago Portrait Co.-----	(C. C. A.) 8-597.
4 F. (2d) 759.	
Chicago Silk Co.-----	(C. C. A.) 25-1692.
90 F. (2d) 689.	
Civil Service Training Bureau, Inc.-----	(C. C. A.) 21-1197.
79 F. (2d) 113.	
Claire Furnace Co., et al. ¹² -----	(S. C. of D. C.), footnotes 3-543,
285 Fed. 936; 274 U. S. 160 (47 S. Ct.	4-539; (C. A. of D. C.) 5-584;
553).	(S. C.) 11-655.
Clara Stanton, Druggist to Women.-----	(C. C. A.) 35-956.
131 F. (2d) 105.	
Clarke, Frederick A.-----	(D. C.) 33-1812; (C. C. A.) 34-
128 F. (2d) 542.	1859.
Clein, Max L., et al.-----	(C. C. A.) 32-1868.
Clito Co. (Rene P. Balditt)-----	(D. C.) 31-1894.
Consolidated Book Publishers, Inc. ¹³ -----	(C. C. A.) 15-637.
53 F. (2d) 942.	
Cordes, J. V., et al. (Martha Beasley Associ- ates).-----	(D. C.) 29-1621.
Cosner Candy Co.-----	(C. C. A.) 25-1703.
92 F. (2d) 1002.	
Coty, Inc. et al.-----	(C. C. A.) 34-1832.
Counter Freezer Manufacturers, National Association of, et al.	(S. C. of D. C.) 22-1137.
Cox, S. E. J.-----	(C. C. A.), "Memoranda," 20-
	739.
Crancer, L. A., et al.-----	(C. C. A.), footnote, 20-722.
Cream of Wheat Co. ¹⁴ -----	(C. C. A.) 10-724.
14 F. (2d) 40.	
Cubberley, U. S. ex rel.-----	(S. C. of D. C.), footnote, 18-663.
Curtis Publishing Co.-----	(C. C. A.) 3-579; (S. C.) 5-599.
270 Fed. 881; 260 U. S. 568.	
Davis, John H., et al. (Normandie Et Cie)---	(C. C. A.) 34-1833.
D. D. D. Corp.-----	(C. C. A.) 34-1821.
125 F. (2d) 679.	
Deckelbaum, Howard (Sun Cut Rate Drug Store).-----	(D. C.) 31-1888.

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.

- De Forest's Training, Inc.----- (C. C. A.) 36-1122.
134 F. (2d) 819.
- Delco Novelty Co., etc. (Alvin B. Wolf)----- (C. C. A.) 36-1135.
135 F. (2d) 564.
- DeLuxe Products Co., etc. (Alvin B. Wolf)--- (C. C. A.) 36-1135.
135 F. (2d) 564.
- Deran Confectionery Co., U. S. v.----- (D. C.) 30-1729.
- Dietz Gum Co. et al.----- (C. C. A.) 29-1557.
104 F. (2d) 999.
- D. J. Mahler Co., Inc.----- (D. C.) 31-1891.
- Dodson, J. G.----- (C. C. A.) 20-737.
- Dollar Co., The Robert.----- (C. C. A.), footnote, 16-684;
"Memoranda," 20-739.
- Douglas Candy Co.----- (C. C. A.) 34-1815.
125 F. (2d) 665.
- Douglas Fir Exploitation & Export Co.----- (S. C. of D. C.), footnote, 3-539;
"Memoranda," 20-741.
- Douglass Candy Co., etc. (Ira W. Minter et al.). (C. C. A.) 28-1885.
102 F. (2d) 69.
- Dubinoff, Louis (Famous Pure Silk Hosiery Co.). (C. C. A.) 27-1673.
- Eastman Kodak Co. et al.----- (C. C. A.) 9-642; (S. C.) 11-669.
7 F. (2d) 944; 274 U. S. 619 (47 S. Ct. 688).
- Edison-Bell Co., Inc., et al.----- (D. C.), "Memoranda," 28-1969.
- Educators Association, Inc., et al.----- (C. C. A.) 30-1614; 30-1658; 32-108 F. (2d) 470; 110 F. (2d) 72; 118 F. 1870.
(2d) 562.
- Edwin Cigar Co., Inc.----- (C. C. A.) 20-740.
- E. J. Brach & Sons.----- (C. C. A.) 29-1577.
- Electric Bond & Share Co. (Smith, A. E., et al. 34 F. (2d) 323; 1 F. Supp. 247. (D. C.) 13-563; 17-637.
- Electrolysis Associates, Inc., et al.----- (D. C.) 30-1720.
- Electro Thermal Co.----- (C. C. A.) 25-1695.
91 F. (2d) 477.
- Elmer Candy Co., U. S. v.----- (D. C.) 30-1729.
- Elmoro Cigar Co.----- (C. C. A.) 29-1616.
107 F. (2d) 429.
- Englander Spring Bed Co., Inc.----- (D. C.), "Memoranda," 28-1969.
- Erie Laboratories, Inc., etc.----- (D. C.) 31-1905.
- E. R. Page Co., Inc., The, U. S. v.----- (D. C.) 36-1175.
- Estrin, Louis, et al. (Hudson Fur Dyeing Co.). (C. C. A.) 34-1805.
- Etablissements Rigaud, Inc., et al.----- (C. C. A.) 34-1811.
125 F. (2d) 590.
- Evans Fur Co. et al.----- (C. C. A.) 24-1600.
88 F. (2d) 1008.
- Evans Novelty Co., etc. (Mitchell A. Bazelon et al.) (C. C. A.) 34-1806.
- Fairyfoot Products Co.----- (C. C. A.) 21-1224; 26-1507.
80 F. (2d) 684; 94 F. (2d) 844.
- F. A. Martoccio Co. (Hollywood Candy Co.).. (C. C. A.) 24-1608.
87 F. (2d) 561.

TABLE OF COURT CASES IN VOLUMES 1-36, INCLUSIVE XXVII:

Famous Pure Silk Hosiery Co. (Louis Dubin- off.)	(C. C. A.) 27-1673.
Fashion Originators Guild of America, Inc., et al.	(C. C. A.) 31-1837; (S. C.) 32- 1856.
114 F. (2d) 80; 312 U. S. 457 (61 S. Ct. 703).	
Fioret Sales Co., Inc., et al.	(C. C. A.) 27-1702; 28-1955.
100 F. (2d) 358.	
Fluegelman & Co., Inc., N.	(C. C. A.) 13-602.
37 F. (2d) 59.	
Flynn & Emrich Co. ¹⁵	(C. C. A.) 15-625.
52 F. (2d) 836.	
Ford Motor Co.	(C. C. A.) 31-1833; 33-1781.
120 F. (2d) 175.	
Fox Film Corporation.	(C. C. A.) 7-589.
296 Fed. 353.	
Fresh Grown Preserve Corp. et al.	(C. C. A.) 34-1827.
125 F. (2d) 917.	
Fried, Leo, et al.	(C. C. A.) 35-978.
Fruit Growers' Express, Inc.	(C. C. A.) 3-628; footnote, 274 Fed. 205; 261 U. S. 629 (42 S. Ct. 518).
Fulton Co., John J.	(C. C. A.) 35-946.
130 F. (2d) 85.	
Garment Mfrs. Assn., Inc., et al.	(S. C. of D. C.) footnote, 18-663.
General Merchandise Co. (David Kritzik)	(C. C. A.) 34-1808.
125 F. (2d) 351.	
General Motors Corp. et al.	(C. C. A.) 31-1852; 35-955.
114 F. (2d) 33.	
George H. Lee Co.	(C. C. A.), "Memoranda," 20- 722; 31-1846.
113 F. (2d) 583.	
George Ziegler Co.	(C. C. A.) 24-1625.
90 F. (2d) 1007.	
Gerrard Co., Inc., The, et al.	(C. C. A.) 34-1862.
Gimbel Bros., Inc.	(C. C. A.) 32-1820.
116 F. (2d) 578.	
Glade Candy Co.	(C. C. A.) 29-1584.
106 F. (2d) 962.	
Globe Printing Co. (Morris Aron et al.)	(D. C.) 36-1130.
50 F. Supp. 289.	
Goldman, Jacob L. (Atlas Health Appliance Co.)	(D. C.) 31-1897.
Good-Grape Co.	(C. C. A.) 14-695.
45 F. (2d) 70.	
Goodyear Tire & Rubber Co.	(C. C. A.) 25-1707; (S. C.) 26- 92 F. (2d) 677; 304 U. S. 257 (58 S. Ct. 863); 101 F. (2d) 620.
1521; (C. C. A.) 28-1899;	
Gotlieb, Lenard, et al. (Reed's Cut Rate Drug Store, etc.).	(D. C.) 31-1885.
Grand Rapids Furniture Co.	(C. C. A.) 36-1118.
134 F. (2d) 332.	

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

Grand Rapids Varnish Co. ¹⁶	(C. C. A.) 13-580.
41 F. (2d) 996.	
Gratz et al.	(C. C. A.) 1-571, 2-545 (S. C.)
258 Fed. 314; 253 U. S. 421 (40 S. Ct. 572).	2-564.
Great Atlantic & Pacific Tea Co., The.....	(C. C. A.) 29-1591.
106 F. (2d) 667.	
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.	
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.
284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461.)	
Harriet Hubbard Ayer, Inc.....	(C. C. A.) 10-754.
15 F. (2d) 274.	
Hartman Wholesale Drug Co., Inc., et al.....	(D. C.) 27-1693.
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.	
Heuser, Herman.....	(C. C. A.) 8-628.
4 F. (2d) 632.	
Heusner & Son, H. N.....	(C. C. A.) 29-1580.
106 F. (2d) 596.	
Hill, Joe B., et al. (McAfee Candy Co., etc.)..	(C. C. A.) 34-1800.
124 F. (2d) 104.	
Hills Bros.....	(C. C. A.) 10-653.
9 F. (2d) 481.	
Hires Turner Glass Co.....	(C. C. A.) 21-1207.
81 F. (2d) 362.	
Hoboken White Lead & Color Works, Inc.....	(C. C. A.) 14-711, 18-663.
67 F. (2d) 551.	
Hofeller Candy Co., Bob.....	(C. C. A.) 22-1138, 34-1842.
82 F. (2d) 647.	
Hoffman Engineering Co.....	(C. C. A.) 21-1221.
Holloway & Co., M. J., et al.....	(C. C. A.) 22-1149; 31-1829.
84 F. (2d) 910.	

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

Hollywood Candy Co. (F. A. Martoccio Co.)	(C. C. A.) 24-1608.
87 F. (2d) 561.	
Holst Publishing Co., et al., U. S. v.	(D. C.) 30-1728.
Hudson Co., The J. L.	(C. C. A.) 32-1889.
Hudson Fur Dyeing Co. (Louis Estrin et al.)	(C. C. A.) 34-1805.
Hughes, Inc., E. Griffiths ¹⁷	(C. A. of D. C.) 17-660, 20-734.
63 F. (2d) 362.	
Hurst & Son, T. C.	(D. C.) 3-565.
268 Fed. 874.	
Ice Cream Manufacturers, International Association of, et al.	(S. C. of D. C.) 22-1137.
Illinois Lumber & Material Dealers Ass'n, Inc.	(C. C. A.) 27-1682.
97 F. (2d) 1005.	
Imperial Candy Co.	(C. C. A.) 28-1894.
101 F. (2d) 718.	
Indiana Quartered Oak Co.	(C. C. A.) 12-721, 16-683.
26 F. (2d) 340; 58 F. (2d) 182.	
Inecto, Inc. ¹⁸	(C. C. A.) 18-705, 20-722.
70 F. (2d) 370.	
Ink Co. of America, The, etc. (Cornelius P. Van Schaack, Jr.), U. S. v.	(D. C.) 36-1171.
International Art Co. et al.	(C. C. A.) 30-1635.
109 F. (2d) 393.	
International Association of Ice Cream Manufacturers, et al.	(S. C. of D. C.) 22-1137.
International Parts Corp.	(C. C. A.) 36-1102.
133 F. (2d) 883.	
International Shoe Co. ¹⁹	(C. C. A.) 12-732; (S. C.) 13-593.
29 F. (2d) 518; 280 U. S. 291 (50 S. Ct. 89).	
Ironized Yeast Co.	(C. C. A.) 20-737.
Jackson Sales Co., The (Robert C. Bundy)	(C. C. A.) 33-1819.
Jaffe, Benjamin	(C. C. A.) 34-1785.
123 F. (2d) 814.	
J. B. Lippincott Co.	(C. C. A.) 36-1158.
137 F. (2d) 490.	
Jenkins, Edward L., et al. (Antisepto Products Co., etc.).	(D. C.) 29-1637.
Jergens-Woodbury Sales Corp.	(C. C. A.) 36-1119.
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.	
Juvenile Shoe Co.	(C. C. A.) 6-594.
289 Fed. 57.	
K. & S. Sales Co. et al., U. S. v.	(D. C.) 30-1727.

¹⁷ For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 489.

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

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

Kaplan, Blanche (Progressive Medical Co., etc.)	(D. C.) 30-1690.
Kay, Abbott E.	(C. C. A.) 13-575. 35 F. (2d) 160.
Keller, Louis, et al. (Casey Concession Co.)	(C. C. A.) 35-970. 132 F. (2d) 59.
Kelley, James	(C. C. A.) 24-1617. 87 F. (2d) 1004.
Keppel & Bro., Inc., R. F.	(C. C. A.) 17-651; (S. C.) 18-684. 63 F. (2d) 81; 291 U. S. 304 (54 S. Ct. 423).
Kidder Oil Co.	(C. C. A.) 32-1823. 117 F. (2d) 892.
Kinney-Rome Co.	(C. C. A.) 4-546. 275 Fed. 665.
Kirk & Co., Jas. S., et al. ²⁰	(C. C. A.) 16-671. 59 F. (2d) 179.
Kirschmann Hardwood Co.	(C. C. A.); footnote, 16-684; "Memoranda," 20-739.
Klapp, Charles L. (The Cardinal Co.)	(D. C.) 29-1639.
Klesner, Alfred (Shade Shop, etc.)	(C. A. of D. C.) 9-650, (S. C.) 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).
Klimat-Pruf Manufacturing Co., U. S. v.	(D. C.) 30-1730.
Kobi & Co., J. W. ²¹	(C. C. A.) 11-713. 23 F. (2d) 41.
Koch, Carl E., et al., U. S. v.	(D. C.) 34-1870.
Koolish, Philip Harry, et al. (Standard Distributing Co.)	(C. C. A.) 34-1863; 35-944. 129 F. (2d) 64.
Kritzik, David (General Merchandise Co.)	(C. C. A.) 34-1808. 125 F. (2d) 351.
L. & C. Mayers Co., Inc.	(C. C. A.) 27-1675. 97 F. (2d) 365.
Lane, Albert	(C. C. A.) 35-949. 130 F. (2d) 48.
Leader Novelty Candy Co., Inc.	(C. C. A.) 25-1701. 92 F. (2d) 1002.
Leavitt, Louis ²²	(C. C. A.) 11-635, 21-1228. * 16 F. (2d) 1019.
Lee Boyer's Candy	(C. C. A.) 34-1857. 128 F. (2d) 261.
Lee Co., George H.	(C. C. A.) "Memoranda," 20- 113 F. (2d) 583. 722; 31-1846.
Lee, U. S. v. (Sherwin et al. v. U. S.)	(D. C.) (C. C. A.); footnote, 290 Fed. 517; 297 Fed. 704 (affirmed 6-559. 268 U. S. 369; 45 S. Ct. 517).
Leisenring, Edwin L., et al. (U. S. Drug & Sales Co., etc.)	(D. C.) 30-1701.
Lcsinsky Co., H.	(C. C. A.) 4-595. 277 Fed. 756.

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

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

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

Levore Co. et al., U. S. v.....	(D. C.) 33-1833.
Lewyn Drug, Inc.....	(D. C.) 28-1951.
Liberty Co., etc. (Joe B. Hill et al.).....	(C. C. A.) 34-1800.
124 F. (2d) 104.	
Lighthouse Rug Co.....	(C. C. A.) 13-587.
35 F. (2d) 163.	
Lippincott Co., J. B.....	(C. C. A.) 36-1158.
137 F. (2d) 490.	
Liquor Trades Stabilization Bureau, Inc. et al..	(C. C. A.) 33-1780.
121 F. (2d) 455.	
Loose-Wiles Biscuit Co.....	(C. C. A.) 7-603.
299 Fed. 733.	
Lorillard Co., P.....	(D. C.) 5-558, (S. C.) 7-599.
283 Fed. 999; 264 U. S. 298 (44 S. Ct. 336).	
Macfadden Publications, Inc. ²³	(C. A. of D. C.) 13-605.
37 F. (2d) 822.	
Macher Watch & Jewelry Co., etc.....	(C. C. A.) 34-1835.
126 F. (2d) 420.	
Mahler Co., Inc., D. J.....	(D. C.) 31-1891.
Maisel Trading Post, Inc.....	(C. C. A.) 20-725, 21-1212, 23-
77 F. (2d) 246; 79 F. (2d) 127; 84 F. (2d)	1381.
768.	
Maison Pichel.....	(D. C.) footnote, 18-663.
Maloney Oil & Mfg. Co. (Sinclair Refining Co.	(C. C. A.) 4-552; (S. C.) 6-587.
et al.).	
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 250).	
Mandel Brothers, Inc., et al.....	(C. C. A.) 32-1886.
March of Time Candies, Inc.....	(C. C. A.) 29-1557.
104 F. (2d) 999.	
Marietta Mfg. Co.....	(C. C. A.) 15-613.
50 F. (2d) 641.	
Marshall Field & Co., et al.....	(C. C. A.) 32-1886.
Martha Beasley Associates (J. V. Cordes et	(D. C.) 29-1621.
al.).	
Martoccio Co., F. A. (Hollywood Candy Co.)..	(C. C. A.) 24-1603.
87 F. (2d) 561.	
Masland Duralcather Co., et al.....	(C. C. A.) 13-567.
34 F. (2d) 733.	
Mayers Co., Inc., L. & C.....	(C. C. A.) 27-1675.
97 F. (2d) 365.	
Maynard Coal Co. ²⁴	(S. C. of D. C.) 3-555, 6-575;
22 F. (2d) 873.	(C. A. of D. C.) 11-698).
May's Cut Rate Drug Co.....	(D. C.) 30-1713.
May's Cut Rate Drug Co. of Charleston.....	(D. C.) 30-1710.
McAfee Candy Co., etc. (Joe B. Hill et al.)...	(C. C. A.) 34-1800.
124 F. (2d) 104.	
McKewen, George Earl, et al. (Herbal Medi-	(D. C.) 31-1913.
cine Co.).	
McKinley - Roosevelt College of Arts and	(C. C. A.) 32-1878.
Sciences.	

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

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

McLean & Son, A., et al.....	(C. C. A.) 22-1149; 26-1501; 31-84 F. (2d) 910; 94 F. (2d) 802.
Mells Manufacturing Co., U. S. v.....	(D. C.) 32-1907.
Melster Candy Co., U. S. v.....	(D. C.) 36-1173.
Mennen Co. ²⁵	(C. C. A.) 6-579.
288 Fed. 774.	
Mentho-Mulsion, Inc., et al.....	(C. C. A.) 32-1868.
Merit Health Appliance Co. (George S. Mogilner et al.).	(D. C.) 32-1900.
Mid West Mills, Inc.....	(C. C. A.) 25-1688.
90 F. (2d) 723.	
Mid-West Portrait Service, etc. (Cornelius P. Van Schaack, Jr.), U. S. v.	(D. C.) 36-1171.
Mid-West Sales Syndicate, etc. (Cornelius P. Van Schaack, Jr.), U. S. v.	(D. C.) 36-1171.
Midwest Studios, Inc., U. S. v.....	(D. C.) 34-1869.
Miles Laboratories, Inc.....	(D. C. of D. C.) 36-1148.
50 F. Supp. 434.	
Miller Co., Charles N.....	(C. C. A.) 27-1678.
97 F. (2d) 563.	
Miller Drug Co.....	(D. C.) 31-1908.
Miller, Ward J. (Amber-Ita).....	(C. C. A.) 21-1223.
Millers National Federation, et al.....	(S. C. of D. C.) 10-739; (C. A. of D. C.) 11-705; (S. C. of D. C.) 14-675 (footnote); (C. A. of D. C.) 14-712.
23 F. (2d) 968; 47 F. (2d) 428.	
Millinery Creators' Guild, Inc., et al.....	(C. C. A.) 30-1619; (S. C.) 32-109 F. (2d) 175; 312 U. S. 469 (61 S. Ct. 708).
1865.	
Mills Novelty Co., et al., U. S. ex rel.....	(S. C. of D. C.) 22-1137.
Minneapolis, Chamber of Commerce of, et al. ²⁶ .	(C. C. A.) 4-604, 10-687.
280 Fed. 45; 13 F. (2d) 673.	
Minter Brothers, etc.....	(C. C. A.) 28-1885.
102 F. (2d) 69.	
Mishawaka Woolen Mfg. Co.....	(C. C. A., S. C.) 5-557.
283 Fed. 1022; 260 U. S. 748 (43 S. Ct. 247).	
M. J. Holloway & Co., et al.....	(C. C. A.) 22-1149; 31-1829.
84 F. (2d) 910.	
Modern Hat Works (Jacob Schachnow).....	(C. C. A.) 32-1875.
Mogilner, George S., et al. (Merit Health Appliance Co.).	(D. C.) 32-1900.
Moir, John, et al. (Chase & Sanborn) ²⁷	(C. C. A.) 10-674.
12 F. (2d) 22.	
Montebello Distillers, Inc., U. S. v.....	(D. C.) 32-1908.
Moretrench Corp.....	(C. C. A.) 34-1849.
127 F. (2d) 792.	
Morrissey & Co., Chas. T., etc.....	(C. C. A.) 14-716.
47 F. (2d) 101.	
Morton Salt Co.....	(C. C. A.) 30-1666.

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

²⁶ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

²⁷ For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

Motor Equipment Specialty Co. (Hiram Barber), U. S. v.	(D. C.) 36-1174.
Mutual Printing Co., U. S. v.	(D. C.) 32-1909.
National Association of Counter Freezer Manufacturers et al.	(S. C. of D. C.) 22-1137.
National Biscuit Co. ²⁸	(C. C. A.) 7-603; (D. C.) 24-299 Fed. 733; 18 F. Supp. 667. 1618.
National Biscuit Co., U. S. v.	(D. C.) 27-1697.
25 F. Supp. 329.	
National Candy Co.	(C. C. A.) 29-1557.
104 F. (2d) 999.	
National Harness Mfrs. Assn.	(C. C. A.) 4-539, 3-570.
261 Fed. 170; 268 Fed. 705.	
National Kream Co., Inc., and National Foods, Inc.	(C. C. A.) 27-1681.
National Merchandising Co., etc. (Perce P. Green et al).	(D. C.) 35-958.
National Optical Stores Co. et al.	(D. C.), "Memoranda" 28-1970.
National Silver Co.	(C. C. A.) 24-1627; 28-1957; 30-88 F. (2d) 425. 1675.
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.	
New Jersey Asbestos Co.	(C. C. A.) 2-553.
264 Fed. 509.	
New York Premium Novelty Co. (Alexander Weiler et al.)	(C. C. A.) 34-1789.
Nitke, Samuel.	(C. A. of D. C.) 34-1840.
Non-Plate Engraving Co. ²⁹	(C. C. A.) 15-597.
49 F. (2d) 766.	
Norden Ship Supply Co., Inc., et al. (Winslow et al.)	(C. C. A.) 4-578.
277 Fed. 206.	
Normandie et Cie (John H. Davis et al.)	(C. C. A.) 34-1833.
Northam Warren Corp.	(C. C. A.) 16-687.
59 F. (2d) 196.	
Nulomoline Co.	(C. C. A.), footnote, 3-542; "Memoranda," 20-740.
254 Fed. 988.	
Oberlin, Robert C. (Research Products Co.)	(D. C.) 29-1626.
Ohio Leather Co. ³⁰	(C. C. A.) 4-699.
45 F. (2d) 39.	
Oliver Brothers, Inc., et al.	(C. C. A.) 28-1926.
102 F. (2d) 763.	
Omega Manufacturing Co., Inc., et al.	(D. C.) 30-1717.
Oppenheim, Collins & Co., Inc., U. S. v.	(D. C.) 33-1833.
Oppenheim, Oberndorf & Co. (Sealpax Co.) ³¹	(C. C. A.) 9-629.
5 F. (2d) 574.	
Ostermoor & Co., Inc. ³²	(C. C. A.) 11-642.
16 F. (2d) 962.	

²⁸ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

²⁹ For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.

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

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

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

Ostler Candy Co.....	(C. C. A.) 29-1584.
106 F. (2d) 962.	
Ozment, C. J., etc.....	(C. C. A.) 22-1135.
Pacific States Paper Trade Assn. et al.....	(C. C. A.) 8-608; (S. C.) 11- 636;
4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255);	(C. C. A.) 24-1631.
88 F. (2d) 1009.	
Page Co., Inc., The E. R., U. S. v.....	(D. C.) 36-1175.
Paramount Famous-Lasky Corp. ³³	(C. C. A.) 16-660.
57 F. (2d) 152.	
Parfums Corday, Inc.....	(C. C. A.) 33-1797.
120 F. (2d) 808.	
Park, Inc., Philip R.....	(C. C. A.) 36-1155.
136 F. (2d) 428.	
Pearsall Butter Co., B. S. ³⁴	(C. C. A.) 6-605.
292 Fed. 720.	
Pep Boys—Manny, Moe & Jack, Inc.....	(C. C. A.) 33-1807.
122 F. (2d) 158.	
Perfect Reconditioned Spark Plug Co., The,	(C. C. A.) 32-1891.
et al.	
Perfect Voice Institute et al.....	(C. C. A.) 35-975.
Perma-Maid Co., Inc.....	(C. C. A.) 33-1803.
121 F. (2d) 282.	
Peterson, W. H., et al.....	(C. C. A.) 34-1789.
124 F. (2d) 187.	
Petrie, John (B-X Laboratories and Purity	(D. C.) 29-1643; 30-1727.
Products Co.), U. S. v.	
Philip Carey Mfg. Co. et al.....	(C. C. A.) 12-726.
29 F. (2d) 49.	
Philip R. Park, Inc.....	(C. C. A.) 36-1155.
136 F. (2d) 428.	
Pioneer Advertising Co., etc. (Cornelius P.	(D. C.) 36-1171.
Van Schaack, Jr.), U. S. v.	
Pittsburgh Cut Rate Drug Co.....	(D. C.) 30-1707.
Piuma, U. S. v.....	(D. C.) 33-1827; (C. C. A.)
40 F. Supp. 119; 126 F. (2d) 601.	34-1837.
Plantation Chocolate Co., Inc., U. S. v.....	(D. C.) 32-1908.
Pond's Extract Co.....	(C. C. A.) 36-1101.
Positive Products Co., etc. (Earl Aronberg)...	(D. C.) 29-1634; (C. C. A.) 35-
132 F. (2d) 165.	979.
Powe Lumber Co., Thos. E.....	(C. C. A.), footnote, 16-684;
	"Memoranda," 20-739.
Poy, Fong, et al.....	(C. C. A.) 34 1790.
124 F. (2d) 398.	
Premium Sales Co., etc. (Mitchell A. Bazelon	(C. C. A.) 34-1806.
et al.)	
Procter & Gamble Co. et al.....	(C. C. A.) 10-661
11 F. (2d) 47.	
Progressive Medical Co., etc. (Blanche Kap-	(D. C.) 30-1690.
lan).	
Prostex Co. (George G. Neff).....	(C. C. A.) 32-1842.
117 F. (2d) 495.	

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

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

Pure Silk Hosiery Mills, Inc.	(C. C. A.) 8-595.
3 F. (2d) 105.	
Q. R. S. Music Co. ³⁵	(C. C. A.) 10-683.
12 F. (2d) 730.	
Quality Bakers of America et al.	(C. C. A.) 31-1858.
114 F. (2d) 393.	
Queen Anne Candy Co. et al.	(C. C. A.) 22-1149; 31-1832.
84 F. (2d) 910.	
Queen Chemical Co. (Charles Shrader)	(D. C.) 32-1904.
Rabhor Co., Inc., The	(C. C. A.) 34-1847.
Radio Wire Television, Inc., of New York et al.	(C. C. A.) 31-1882.
Raladam Co. ³⁶	(C. C. A.) 14-683; (S. C.) 15-
42 F. (2d) 430; 51 F. (2d) 587; 283 U. S.	598; (C. C. A.) 33-1820; (S.
643 (51 S. Ct. 587); 123 F. (2d) 34; 316	C.) 34-1843.
U. S. 149 (62 S. Ct. 966).	
Rand, Howard, et al. (Green Supply Co., etc.)	(D. C.) 35-958.
Raymond Bros.-Clark Co.	(C. C. A.) 4-625; (S. C.) 7-594.
280 Fed. 529; 263 U. S. 565 (44 S. Ct. 162).	
Real Products Corp. et al.	(C. C. A.) 25-1685.
90 F. (2d) 617.	
Reed's Cut Rate Drug Store, etc. (Lenard	(D. C.) 31-1885.
Gotlieb et al.).	
Republic Iron & Steel Co.	(D. C.) (S. C. of D. C.), foot-
	note, 3-543.
Research Products Co. (Robert C. Oberlin)	(D. C.) 29-1626.
Rex Products Co., etc. (Earl Aronberg)	(D. C.) 29-1634 (C. C. A.) 35-
132 F. (2d) 165.	979.
Ritholz, Benjamin D., et al.	(C. C. A.) 22-1145; (D. C. of
105 F. (2d) 937.	D. C.) 27-1696; (C. A. of D.
	C.) 29-1569.
Rittenhouse Candy Co. (Sol Block et al.)	(C. C. A.) 26-1497.
Rock, Monica M.	(C. C. A.) 32-1845.
117 F. (2d) 680.	
Rogers Candy Co.	(C. C. A.) 28-1894.
101 F. (2d) 718.	
Ron-Al Medicine Co., Dr., etc. (Irving	(D. C.) 29-1624.
Sofronski).	
Royal Baking Powder Co. ³⁷	(C. C. A.) 4-614; (S. C. of D. C.)
281 Fed. 744; 32 F. (2d) 966.	11-677, 701; (C. A. of D. C.)
	12-740.
Royal Milling Co. et al. ³⁸	(C. C. A.) 16-679; (S. C.) 17-664.
58 F. (2d) 581; 288 U. S. 212 (53 S. Ct.	
335).	

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

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

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

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

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

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

Ryan Candy Co. (Southern Premium Manufacturing Co., etc.) 83 F. (2d) 1008.	(C. C. A.) 22-1143.
Saks & Co.-----	(C. C. A.) 32-1877.
Salt Producers Ass'n et al.----- 134 F. (2d) 354.	(C. C. A.) 36-1110.
Sanders, Peter, et al. (The Perfect Reconditioned Spark Plug Co.)	(C. C. A.) 32-1891.
Savage Candy Co.----- 92 F. (2d) 1003.	(C. C. A.) 25-1705.
Schachnow, Jacob (Modern Hat Works)-----	(C. C. A.) 32-1875.
Scientific Manufacturing Co., Inc., et al.----- 124 F. (2d) 640.	(C. C. A.) 34-1793.
Sea Island Thread Co., Inc.----- 22 F. (2d) 1019.	(C. C. A.) 11-705.
Sealpax Co. (Oppenheim, Oberndorf & Co.) ³⁹ ----- 5 F. (2d) 574.	(C. C. A.) 9-629.
Sears, Roebuck & Co.----- 258 Fed. 307.	(C. C. A.) 1-562, 2-536.
Sebrone Co. et al.----- 135 F. (2d) 676.	(C. C. A.) 36-1142.
Sekov Corp., et al.-----	(D. C.) 30-1705.
Shade Shop, etc., Alfred Klesner doing business under name of, see Klesner, Alfred.	
Shakespeare Co.----- 50 F. (2d) 758.	(C. C. A.) 15-609.
Shapiro, William, et al.-----	(C. C. A.) 35-978.
Sheffield Silver Co., Inc.----- 98 F. (2d) 676.	(C. C. A.) 27-1689; 31-1826
Sherry's Cut Rate Drug Co., Inc.-----	(D. C.) 31-1903.
Sherwin et al, v. U. S. (Lee, U. S. v.)----- 290 Fed. 517; 297 Fed. 704 (affirmed, 268 U. S. 369); (45 S. Ct. 517).	(D. C.); (C. C. A.) footnote, 6-559.
Shrader, Charles (Queen Chemical Co.)-----	(D. C.) 32-1904.
Shupe-Williams Candy Co.----- 106 F. (2d) 962.	(C. C. A.) 29-1584.
Sifers Confection Co. (H. I. Sifers, etc.)----- 84 F. (2d) 999.	(C. C. A.) 22-1147.
Signode Steel Strapping Co.----- 132 F. (2d) 48.	(C. C. A.) 35-960.
Silver Co., L. B.----- 289 Fed. 985; 292 Fed. 752.	(C. C. A.) 6-559, 608.
Sinclair Refining Co.----- 276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).	(C. C. A.) 4-552; (S. C.) 6-587.
Smith, A. E., et al., and Electric Bond and Share Co. 34 F. (2d) 323; 1 F. Supp. 247.	(D. C.) 13-563, 17-637.
Sofronski, Irving (Dr. Ron-Al Medicine Co., etc.).	(D. C.) 29-1624.
Southern Hardware Jobbers Assn.----- 290 Fed. 773.	(C. C. A.) 6-597.

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

TABLE OF COURT CASES IN VOLUMES 1-36, INCLUSIVE XXXVII

Southern Premium Manufacturing Co., etc. (Ryan Candy Co.).	(C. C. A.) 22-1143.
83 F. (2d) 1008.	
Sowles, M. H.	(D. C.) "Memoranda" 20-740.
Stadley, Nolan B. (Sterling Appliance Co.)	(D. C.) 32-1896.
Staley Mfg. Co., A. E., et al.	(C. C. A.) 36-1126.
135 F. (2d) 453.	
Standard Container Manufacturers' Association, Inc., et al.	(C. C. A.) 32-1879.
119 F. (2d) 262.	
Standard Distributing Co. (Philip Harry Koolish et al.).	(C. C. A.) 34-1863; 35-944.
129 F. (2d) 64.	
Standard Education Society	(C. C. A.) 10-751; 24-1591; (S. C.) 25-1715; (C. C. A.) 26-1524; 27-1680; 35-976.
14 F. (2d) 974; 86 F. (2d) 692; 302 U. S. 112 (58 S. Ct. 113); 97 F. (2d) 513.	
Standard Oil Co. of New Jersey, et al.	(C. C. A.) 5-542, 6-587.
282 Fed. 81; 261 U. S. 463 (43 S. Ct. 450).	
Standard Oil Co., of New York	(C. C. A.) 3-622.
273 Fed. 478.	
Stanton, Druggist to Women, Clara	(C. C. A.) 35-956.
131 F. (2d) 105.	
Startup Candy Co.	(C. C. A.) 28-1951.
102 F. (2d) 1015.	
Sterling Appliance Co. (Nolan B. Stadley)	(D. C.) 32-1896.
Stevenson Corp., The, et al.	(C. C. A.) 33-1818.
Sun Cut Rate Drug Store (Howard Deckelbaum).	(D. C.) 31-1888.
Sweet Candy Co.	(C. C. A.) 30-1682; (D. C.) 35-988.
112 F. (2d) 168.	
Sweets Co. of America, Inc.	(C. C. A.) 30-1625; (D. C.) 35-988.
109 F. (2d) 296.	
Swift & Co.	(C. C. A.) 8-616; (S. C.) 11-629.
8 F. (2d) 595; 272 U. S. 554 (47 S. Ct. 175).	
Temple Anthracite Coal Co.	(C. C. A.) 15-616.
51 F. (2d) 656.	
Texas Co. (Standard Oil Co. of N. Y.)	(C. C. A.) 3-622.
273 Fed. 478.	
Thatcher Mfg. Co.	(C. C. A.) 9-631; (S. C.) 11-629.
5 F. (2d) 615; 272 U. S. 554 (47 S. Ct. 175).	
Thomas Quilt Factories	(C. C. A.) 32-1815.
116 F. (2d) 347.	
Thomsen-King & Co., Inc., et al.	(C. C. A.) 30-1642; (D. C.) 30-1692.
109 F. (2d) 516.	
Thyrole Products Co. (I. Ralph Weinstock)	(D. C.) 30-1722.
Toledo Pipe-Threading Machine Co. ⁴⁰	(C. C. A.) 9-652, 10-664.
6 F. (2d) 876; 11 F. (2d) 337.	
Tubular Rivet & Stud Co.	(D. C. of D. C.) 34-1786.
United Corporation et al.	(C. C. A.) 30-1659.
110 F. (2d) 473.	
United Diathermy, Inc.	(D. C.) 32-1893.

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

- U. S. Drug & Sales Co., etc. (Edwin L. Leisen- ring et al.) (D. C.) 30-1701.
- U. S. ex rel. Cubberley..... (S. C. of D. C.) footnote, 18-663.
- U. S. ex rel. Mills Novelty Co. et al..... (S. C. of D. C.) 22-1137.
- U. S. v. American Television Institute, Inc.... (D. C.) 36-1175.
- U. S. v. Chesapeake Distilling & Distributing Co. (D. C.) 32-1909.
- U. S. v. Cornelius P. Van Schaack, Jr. (The Ink Co. of America, etc.) (D. C.) 36-1171.
- U. S. v. Deran Confectionery Co..... (D. C.) 30-1729.
- U. S. v. Elmer Candy Co..... (D. C.) 30-1729.
- U. S. v. Gynex Corp. (Bureau of Hygiene).... (D. C.) footnote, 34-1869; 35-987.
- U. S. v. Hamilton-Brown Shoe Co..... (D. C.) footnote, 26-1495,
- U. S. v. Hiram Barber (Motor Equipment Specialty Co.) (D. C.) 36-1174.
- U. S. v. Holst Publishing Co. et al..... (D. C.) 30-1728.
- U. S. v. John Petrie (B-X Laboratories and Purity Products Co.) (D. C.) 29-1643; 30-1727.
- U. S. v. K. & S. Sales Co. et al..... (D. C.) 30-1727.
- U. S. v. Klimate-Pruf Manufacturing Co..... (D. C.) 30-1730.
- U. S. v. Koch et al..... (D. C.) 34-1870.
- U. S. v. Levore Co. et al..... (D. C.) 33-1833.
- U. S. v. McKewen, et al..... (D. C.) 31-1913.
- U. S. v. Mells Manufacturing Co..... (D. C.) 32-1907.
- U. S. v. Melster Candy Co..... (D. C.) 36-1173.
- U. S. v. Midwest Studios, Inc..... (D. C.) 34-1869.
- U. S. v. Montebello Distillers, Inc..... (D. C.) 32-1908.
- U. S. v. Mutual Printing Co..... (D. C.) 32-1909.
- U. S. v. National Biscuit Co..... (D. C.) 27-1697.
- 25 F. Supp. 329.
- U. S. v. Oppenheim, Collins & Co., Inc..... (D. C.) 33-1833.
- U. S. v. Piuma..... (D. C.) 33-1827; 34-1837.
- 40 F. Supp. 119; 126 F. (2d) 601.
- U. S. v. Plantation Chocolate Co., Inc..... (D. C.) 32-1908.
- U. S. v. Sweet Candy Co..... (D. C.) 35-988.
- U. S. v. Sweets Co. of America, Inc..... (D. C.) 35-988.
- U. S. v. The E. R. Page Co., Inc..... (D. C.) 36-1175.
- U. S. v. Wilson Chemical Co., Inc..... (D. C.) 36-1171.
- Utah-Idaho Sugar Co..... (C. C. A.) 11-692,
- 22 F. (2d) 122.
- Van Schaack, Jr., Cornelius P. (The Ink Co. of America, etc.), U. S. v. (D. C.) 36-1171.
- Viscose Co. et al..... (D. C.) "Memoranda," 28-1970.
- Vivaudou, Inc., V..... (C. C. A.) 15-631.
- 54 F. (2d) 273.
- Von Schrader Manufacturing Co. et al..... (C. C. A.) 34-1788.
- Walker, James, et al. (Merit Health Appliance Co.). (D. C.) 32-1900.
- Walker's New River Mining Co..... (C. C. A.) 21-1213.
- 79 F. (2d) 457.
- Wallace, E. J. "..... (C. C. A.) 20-713.
- 75 F. (2d) 733.

⁴¹ For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 400.

TABLE OF COURT CASES IN VOLUMES 1-36, INCLUSIVE XXXIX

Ward Baking Co.....	(C. C. A.) 2-550.
264 Fed. 330.	
W. B. Caldwell, Inc., Dr.....	(C. C. A.) 30-1670.
111 F. (2d) 889.	
Webb-Crawford Co. et al.....	(C. C. A.) 30-1630.
109 F. (2d) 268.	
Weiler, Alexander, et al. (New York Premium Novelty Co.)	(C. C. A.) 34-1789.
Weinstock, I. Ralph (Thyrole Products Co.)..	(D. C.) 30-1722.
Wellworth Sales Co. (Isidore Halperin et al.)..	(C. C. A.) 34-1841.
Western Chemicals, Inc., et al.....	(D. C.) 28-1939.
Western Meat Co.....	(C. C. A.) 8-589, 623; (S. C.) 11-
1 F. (2d) 95; 4 F. (2d) 223; 272 U. S. 554	629; (C. C. A.) 13-559.
(47 S. Ct. 175); 33 F. (2d) 824.	
Western Sugar Refinery Co. et al.....	(C. C. A.) 4-557.
275 Fed. 725.	
Wholesale Grocers' Assn. of El Paso et al.....	(C. C. A.) 4-495.
277 Fed. 657.	
Wilson Chemical Co., Inc., U. S. v.....	(D. C.) 36-1171.
Winship Corp. et al.....	(D. C.) 30-1697.
Winslow et al.....	(C. C. A.) 4-578.
277 Fed. 206.	
Winsted Hosiery Co. ⁴²	(C. C. A.) 3-618; (S. C.) 4-610.
272 Fed. 957; 258 U. S. 483 (42 S. Ct. 184).	
Winston Co., John C. ⁴³	(C. C. A.) 8-625.
3 F. (2d) 961.	
Wire Rope and Strand Mfrs. Ass'n., Inc.....	(C. C. A.) 36-1146.
Wolf, Alvin B. (DeLuxe Products Co., etc.)....	(C. C. A.) 36-1135.
135 F. (2d) 564.	
Woolley, E. R.....	(C. C. A.) 11-692.
22 F. (2d) 122.	
Wrisley Co., Allen B., et al.....	(C. C. A.) 31-1815.
113 F. (2d) 437.	
Yardley of London, Inc.....	(C. C. A.) 31-1869.
Zelle Co., The (Leland F. Benham).....	(D. C.) 29-1631.
Ziegler Co., George.....	(C. C. A.) 24-1625.
90 F. (2d) 1007.	

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

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



FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 1, 1943, TO JUNE 30, 1943

IN THE MATTER OF

JOSEPH G. BRANCH INSTITUTE OF ENGINEERING AND SCIENCE

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

Docket 4708. Complaint, Feb. 13, 1942—Decision, Jan. 5, 1943

Where an individual engaged in competitive sale and distribution to purchasers in foreign nations of Spanish correspondence courses in numerous subjects, advertising his courses in newspapers in various Central and South American countries and making extensive use of letters, leaflets, circulars, catalogues, and other advertising material circulated by mail among prospective students or members of the public generally in such countries—

- (a) Represented directly or by implication through representations in such advertising that he had authority to confer degrees which were recognized by reputable and accredited colleges and universities and accepted generally in the academic and scientific world;
- (b) Represented through use of word "University" to refer to his school that the same was a university within the generally accepted meaning of the word, or an institution of higher learning with resident faculty of learned persons and a resident student body, and with properly equipped laboratories and libraries for the use of students and for the conduct of scientific research and experiment;

The facts being that said school was neither a university nor institution of higher learning of any kind; it had no entrance requirements, resident students library, or laboratory facilities, but was conducted from the residence in which said individual lived and which served also as his law office; there was only one other person connected with the school besides said individual who claimed to possess any advanced education; the other duties in connection with the school were performed by some six or eight Spanish or Mexican girls, none of whom had more than a high-school education and who were employed primarily as translators and clerical assistants, and at times assisted in the grading of lessons returned to the school by the students; said school enjoyed no official recognition of any nature; and his purported diplomas or degrees were worthless in the academic and scientific world;

- (c) Represented and implied, through referring to his school as an officially recognized university, that it had been investigated and approved by some appropriate agency of the United States Government or of some State, and that by reason thereof it had been and was officially recognized as an accredited university;

The facts being his claim of official recognition was based on a statement obtained by him from the superintendent of public instruction of Illinois which purported to give official recognition to the school and was issued provisionally,

Complaint

36 F. T. C.

pending investigation and inspection; and notwithstanding subsequent letters from said superintendent revoking the former statement, expressly stating that the school was not recognized by his department and advising said individual that it had no authority to grant degrees, together with a note of caution as respects his correspondence or advertising in the aforesaid matter, he continued to make wide use of said statement in his advertising;

- (d) Falsely represented and implied, through use of the words "Institute of Engineering and Science" in his trade name, that such school was an institute within the generally accepted meaning of the term, or was established and maintained for the purpose of considering and studying engineering and scientific problems and conducting research, and that it had the necessary facilities and personnel to carry on the work of an institute;
- (e) To further the impression that said school and his diplomas and degrees enjoyed official recognition in the United States, engaged in the practice of attaching to such diplomas, written in Spanish, the certificates of notaries public and other public officials in English, such as (1) a certificate of a notary public of Cook County, Ill., to the effect that the persons whose names appeared upon a document purporting to confer the degree of Doctor of Laws, i. e., said individual as "President" and one M. J. Patrance, as "Secretary"—in fact, deceased—as well as a "registrar," had appeared before such notary and acknowledged that they executed the instrument, (2) certificate of the County Clerk of Cook County to the effect that said notary public was a notary public of said county, and (3) certificate of the Secretary of State of Illinois to the effect that the signer of the second certificate was in fact county clerk of Cook County;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public in Central and South American countries with respect to the character of said school and the value of said courses of study, and the purported diplomas and degrees conferred, and into belief that they were comparable to those, there highly valued, obtained from colleges and universities in the United States, and to cause it to purchase said courses of study as a result of such deception; whereby substantial trade was diverted unfairly to said individual from his competitors;

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

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

* *Mr. William L. Pencke* for the Commission.

Mr. Charles J. Tressler, 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 Joseph G. Branch, an individual, trading as Joseph G. Branch Institute of Engineering and Science, 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:

1

Complaint

PARAGRAPH 1. Respondent, Joseph G. Branch, is an individual, trading and doing business under the style and firm name of Joseph G. Branch Institute of Engineering and Science, with his office and principal place of business located at 3917 South Parkway, in the city of Chicago and State of Illinois. Respondent is the sole owner and formulates, controls, and directs the policies and practices of said business. Said respondent is now and for more than 5 years last past has been engaged in the sale and distribution in commerce between the State of Illinois and various foreign nations in Central and South America of courses of study and instruction in the arts, sciences, commerce, education, and numerous allied subjects which are pursued by correspondence. Respondent, in the course and conduct of said business, during the time aforesaid, caused and does now cause his said courses of study and instruction to be transported from his said place of business in the State of Illinois to the purchasers thereof located in said various foreign nations.

PAR. 2. There is now and has been at all times hereinafter mentioned a course of trade in said courses of instruction so sold and distributed by the respondent in commerce between the State of Illinois and said foreign nations.

There are other persons, firms, corporations, schools, and universities that have been and are engaged in offering for sale, selling, and transporting in commerce between and among the various States of the United States and with foreign nations, courses of study and instruction in the arts and sciences and general education, and respondent is engaged in substantial competition with such concerns in the sale of courses of study and instruction as herein set out.

PAR. 3. In the course and conduct of his business the respondent, by means of advertisements in newspapers published in various foreign countries and by letterheads, leaflets, circulars, catalogs and other advertising materials circulated by mail among prospective students or members of the public generally in such foreign countries, solicits the purchase of his courses of study and instruction. Said advertisements and representations are all printed and published in the Spanish language. Typical of such advertisements is the following:

Le	PROGRESE CON EL TIEMPO	Lo habilitaremos
ofrecemos		para un puesto
una		esplendido
carrera		blen retribuido.
	Aproveche Esta Oportunidad Grandiosa	
	Para Adquirir Un Titulo	

Inscribase en cualquiera de los cursos que a continuacion se enumeran; que le proporcionara una profesion magnifica y lucrativa, por una suma pagadera

Complaint

36 F. T. C.

en abonos mensuales, y de la manera mas economica, obtendra una educacion brillante, en su propio hogar, sin interrumpir sus ocupaciones diarias.

Agricultura	Ing. Automovilista	Optometria
Agrimensura	Ing. Civil	Bachillerato
Arquitectura	Ing. Electrica	Economia Politica
Aviacion	Ing. Mecanica	Biologia
Dibujo mecanico	Ing. de Minas	Bacteriologia
Quimica Industrial	Ing. Petrolera	Comercio (Av)
Quimica Azucarera	Ing. Radiotelegrafica	Derecho
Electroterapia	Ing. Sanitaria	Farmacias
Odontologia	Pedagogia	Contabilidad
(Cirugia Dental)	Veterinaria	Filosofia
Metalurgia	Medicina	Inglés

Seis magnificos mapas anatomicos y bacteriologicos murales, en colores, con todos nuestros cursos científicos.

**THE JOSEPH G. BRANCH INSTITUTE OF
ENGINEERING AND SCIENCE
FUNDADA EN 1910**

3917 South Parkway, Chicago, U. S. A.

The English translation of this advertisement is substantially as follows:

PROGRESS WITH THE TIMES

We
offer you
a
career

We prepare you
for a splendid
well-paid position.

Profit By This Grand Opportunity For Acquiring A Degree

Enroll for any one of the courses enumerated below, that will prepare you for a great and lucrative profession, for a tuition that you will pay in monthly instalments, and in a most economical way, you will obtain a brilliant education in your own home, without interrupting your daily work.

Agriculture	Automotive Eng.	Optometry
Surveying	Civil Eng.	Speech
Architecture	Electric Eng.	Political Economy
Aviation	Mechanical Eng.	Biology
Mechanical Drawing	Mining Eng.	Bacteriology
Industrial Art	Oil Eng.	Commerce
Art	Radio Eng.	Law
Electricity	Sanitary Eng.	Pharmacy
Dentistry	Teaching	Music
(Dental Surgery)	Veterinary	Philosophy
Metallurgy	Medicine	English

1

Complaint

Six magnificent anatomical maps and bacteriological charts, in colors, with all of our scientific courses.

THE JOSEPH G. BRANCH INSTITUTE OF
ENGINEERING AND SCIENCE
FOUNDED IN 1910

3917 South Parkway, Chicago, U. S. A.

On leaflets, letterheads, and other advertising material appear, among others, the following statements and representations:

UNA EDUCACION UNIVERSITARIA EN SU PROPIO HOGAR

Nuestros cursos de estudio son los conocidos como CURSOS DE EXTENSION; es decir, que son exactamente iguales a los CURSOS PARA RESIDENTES de Chicago, así permitiendo a una persona obtener una educación universitaria en su propio hogar y a poco costo.

Para inscribirse en nuestra Universidad, no se requiere sabiduría especial, solo ENTUSIASMO y APLICACION a sus estudios.

OFICIALMENTE RECONOCIDA COMO UNIVERSIDAD ACREDITADA.

Universidad Oficialmente Reconocida.

The English translation of the foregoing representations is substantially as follows:

A University Education in Your Own Home.

Our courses of study are Known as EXTENSION COURSES: that is to say they are exactly like the COURSES for RESIDENTS in Chicago, thus enabling a person to obtain a university education in his own home and at little cost.

In order to register in our University, no special learning is required, only enthusiasm and application to one's studies.

Officially Recognized as an Accredited University.

Officially Recognized University.

PAR. 4. By means of the foregoing statements and representations and others of like tenor and effect, the respondent represents to the purchasing public that respondent has authority to confer academic degrees which are recognized by reputable accredited colleges and universities; that the various degrees so conferred are known to and accepted in the academic and scientific world. Through the use of the word university in said newspaper advertisements, leaflets, and letterheads, he further represents and implies that said school is an institution of higher learning with a resident faculty and other officers charged with the care and management of a resident student body; that there are available properly equipped laboratories and libraries for the use of students and the conduct of scientific research and experiments.

By representing that his school is officially recognized as an accredited university or is an officially recognized university, the respondent

infers and implies that his said school has been investigated, inspected and approved by some appropriate agency of the United States Government or some State or other political subdivision thereof, and that by reason of such investigation, inspection or approval, such school has been and is officially recognized as an accredited university or is a university operating under such official approval or sanction.

Respondent through the use of the words "Institute," "Engineering," and "Science" as part of his trade name represents or implies that his said business is a group or organization of engineers and scientists, established for the purpose of considering engineering and scientific problems, conducting researches and generally promoting the interests and welfare of its members; and that it has the necessary facilities and personnel to carry on the work of an institute.

PAR. 5. In truth and in fact respondent's business is a correspondence school organized and operated for the purpose of offering and selling correspondence courses to purchasers thereof in Central and South American countries. The alleged degrees conferred by respondent are not recognized by reputable accredited colleges and universities and are not accepted in the academic and scientific world. Respondent's business is not a university, which term is generally accepted and understood to mean an educational institution of higher learning with power to confer degrees and with a resident faculty of learned persons acting as instructors in the various branches of learning including the arts, sciences, medicine, and other branches of higher learning.

In truth and in fact respondent's school is not a university officially recognized nor is it officially recognized as an accredited university. Said school has never been approved or accredited by any governmental agency of the United States or some State or political subdivision thereof; nor has respondent ever been authorized to operate said school as a university, nor has said school ever been approved or designated as an accredited university by reason of any investigation, inspection, or approval by any governmental agency as aforesaid.

In truth and in fact, respondent's business is operated in his residence in the city of Chicago. There are no resident students, nor is there a resident faculty, nor any other officers or employees usually required in the operation of a university. There are no library or laboratory facilities for the use of the students and the carrying on of experimental or research work in connection with engineering, scientific, or any other subjects. The respondent has prepared and

compiled all lesson material and is assisted by several clerks in the distribution and grading of the lessons.

PAR. 6. The false, misleading, and deceptive practices as herein-after described in using the words "University" and "Institute" in the advertising and trade name of respondents; in representing and implying that respondent's business is an institution of higher learning with authority to confer degrees in the numerous academic and scientific subjects to be taught by him; or that his said business is an organization consisting of members in the scientific and engineering fields constituting an institute as that designation is usually understood, have a tendency to and do induce prospective purchasers to subscribe to and enroll for respondent's course of study in the erroneous and mistaken belief that the representations and statements of the respondent as herein set forth are true.

PAR. 7. There are among competitors of respondent, individuals, corporations, schools and universities who sell and distribute courses of study and instruction in the arts and sciences to purchasers thereof in Central and South American countries who truthfully represent their said courses of study and instruction.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondents as hereinabove set out are calculated to and do have a tendency and capacity to lead a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true; further, as a direct consequence of such mistaken and erroneous belief induced by the aforesaid acts and representations of respondent, a substantial number of the consuming public has purchased respondent's courses of instruction. As a result of said acts and practices, substantial trade in commerce has been unfairly diverted to the respondent from respondent's competitors in said commerce who do not misrepresent their courses of study and instruction to the injury of said competitors.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 13, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Joseph G. Branch, individually, and trading as Joseph G. Branch

Findings

36 F. T. C.

Institute of Engineering and Science, 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 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 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, Joseph G. Branch, is an individual, trading and doing business under the name Joseph G. Branch Institute of Engineering and Science, with his office and principal place of business located at 3917 South Parkway, Chicago, Ill. Respondent is now and for a number of years last past has been engaged in the sale and distribution, in commerce between the State of Illinois and various foreign nations in Central and South America, of courses of study in numerous subjects, such courses of study being pursued by correspondence.

In the course and conduct of his business respondent causes and has caused his courses of study, when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located in such foreign nations. Respondent maintains and has maintained a course of trade in his courses of study in commerce between the State of Illinois and such foreign nations.

PAR. 2. In the sale and distribution of his courses of study respondent is and has been in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution, in commerce between various States of the United States and such foreign nations, of correspondence courses of study in the same or some of the same subjects as those taught by respondent.

PAR. 3. To induce the purchase of his courses of study respondent advertises extensively in newspapers published in various Central

1

Findings

and South American countries, and respondent also makes extensive use of letters, leaflets, circulars, catalogs, and other advertising material which is circulated by mail among prospective students or members of the public generally in such countries. All of respondent's newspaper advertisements and other advertising material are printed and published in the Spanish language. Among and typical of respondent's newspaper advertisements is the following:

PROGRESE CON EL TIEMPO

LE OFRECEMOS
UNA CARRERA

LO HABILITAMOS
PARA UN PUESTO
ESPLENDIDO,
BIEN RETRIBUIDO

APROVECHE ESTA OPORTUNIDAD GRANDIOSA
PARA ADQUIRIR UN TITULO

EL JOSEPH G. BRANCH INSTITUTE OF ENGINEERING AND SCIENCE, de Chicago, U. S. A., fue fundado en 1910, contando hoy con miles de graduados en todo el mundo, muchos de los cuales han llegado a ser hombres distinguidos y de renombre en casi todas las profesiones.

Inscribase en cualquiera de los cursos que a continuacion se enumeran, que le proporcionara una profesion magnifica y lucrativa, por una suma pagadera en pequenos abonos mensuales y de la manera mas economica obtendra una educacion brillante, en su propio hogar, sin interrumpir sus ocupaciones diarias:

Agricultura	Finanzas	Medicina
Agrimensura	Ing. Radiotelegrafia-	Optometria
Arquitectura	Television	Bachillerato
Avacion	Ing. Automovillista	Economia Politica
Dibujo Mecanico	Ing. Civil	Biologia
Quimica Industrial	Ing. Electra	Bacteriologia
Quimica Azucarera	Ing. Mecanica	Comercio
Quimica Analitica	Ing. de Minas	Derecho
Industrial	Ing. Petrolera	Farmacacia
Electroterapia	Ing. Sanitaria	Contabilidad
Odontologia	Metalurgia	Filosofia
(Cirugia Dental)	Pedagogia	Inglés
Motores Diesel	Veterinaria	
Periodismo	Secretario Commercial	

TODOS NUESTROS CURSOS EN EL IDIOMA ESPANOL

GARANTIAS INIGUALABLES.—Los DIPLOMAS y TITULOS otorgados por esta benemerita Institucion son firmados y sellados por los oficiales de nuestra Universidad, atestados ante Notario Publico, certificados por el Tribunal del Condado y autentificados por el Secretario del Estado de Illinois, U. S. A. El

Findings

36 F. T. C.

valor inestimable de un Diploma o Titulo de nuestra Universidad se de EE. UU. para Curses de Extension (por correspondencia).

Magnificos obsequios en todas nuestros Cursos, de inestimable valor para el estudiante en sus estudios y para su profesion futura.

(Com. Ex. No. 5)

The English translation of this advertisement is substantially as follows:

PROGRESS WITH THE TIMES

WE OFFER YOU
A CAREER

WE WILL QUALIFY
YOU FOR A SPLENDID
POSITION WITH A
GOOD SALARY

TAKE ADVANTAGE OF THIS SPLENDID
OPPORTUNITY TO ACQUIRE A DEGREE

THE JOSEPH G. BRANCH INSTITUTE OF ENGINEERING AND SCIENCE, Chicago, U. S. A., was founded in 1910, having today thousands of graduates throughout the world, many of them having become distinguished men and prominent in all professions.

Enroll in any of our courses as listed below, which will furnish you a magnificent and lucrative profession, at a small sum payable monthly and in a most economical way obtain a brilliant education in your own home without interfering with your daily work.

Agriculture	Finances	Commercial Secretary
Surveying	Radio and Television	Medicine
Architecture	Eng.	Optometry
Aviation	Automotive Eng.	High School Education
Mechanical Eng.	Civil Eng.	Political Economy
Industrial Chemistry	Electrical Eng.	Biology
Sugar Chemistry	Mechanical Eng.	Bacteriology
Analytical Industrial Chemistry	Mining Eng.	Commerce
Electro-Therapy	Petroleum Eng.	Law
Dentistry	Sanitary Eng.	Pharmacy
(Dental Surgery)	Metallurgy	Bookkeeping
Diesel Engines	Education	Philosophy
Journalism	Veterinary Science	English

ALL OUR COURSES ARE IN THE SPANISH LANGUAGE

UNEQUALED GUARANTEES.—The DIPLOMAS and DEGREES awarded by this worthy Institute are signed and sealed by the officials of our Institute, acknowledged before a Notary Public, certified by the County Court Clerk and authenticated by the Secretary of the State of Illinois, U. S. A. The inestimable value of a diploma or degree from our Institute is shown by it being the only officially recognized University in accordance with the laws of United States for extension courses (by correspondence).

Magnificent presents in all our courses of study, of inestimable value to the student in his studies and future profession. (Com. Ex. No. 57A-B)

Among and typical of the statements and representations appearing in letters, leaflets, pamphlets and other advertising material used by respondent are the following:

UNIVERSIDAD OFICIALMENTE RECONOCIDA (Com. Ex. No. 8)

UNA EDUCACION UNIVERSITARIA EN SU PROPIO HOGAR

* * * * *

Nuestros cursos de estudio son los conocidos como CURSOS DE EXTENSION; es decir, que son exactamente iguales a los CURSOS PARA RESIDENTES de Chicago, así permitiendo a una persona obtener una educación universitaria en su propio hogar y a poco costo.

Para inscribirse en nuestra Universidad, no se requiere sabiduría especial, solo ENTUSIASMO y APLICACION a sus estudios. (Com. Ex. No. 9)

The English translation of these representations is substantially as follows:

OFFICIALLY RECOGNIZED UNIVERSITY (Com. Ex. No. 58A)

A UNIVERSITY EDUCATION IN YOUR OWN HOME

* * * * *

Courses in studies are known as EXTENSION COURSES; that is to say, they are exactly like the COURSES FOR RESIDENTS of Chicago, so that a person is enabled to obtain a university education in his own home and at little expense.

In order to enroll in our University, there are no special requirements, only ENTHUSIASM and DEVOTION to the studies is needed. (Com. Ex. No. 59)

PAR. 4. Through the use of these advertisements and representations, and others of a similar nature, respondent represents, directly or by implication, that he has authority to confer academic degrees which are recognized by reputable, accredited colleges and universities and accepted generally in the academic and scientific world. Through the use of the word "University" to describe and refer to his school, respondent further represents and implies that his school is a university within the generally accepted meaning of that term; that is, an institution of higher learning, with resident faculties of learned persons and with a resident student body, and with properly equipped laboratories and libraries for the use of students and for the conduct of scientific research and experiment.

By referring to his school as an "officially recognized university," respondent represents and implies that his school has been investigated and approved by some appropriate agency of the United States Government or of some State of the United States, and that by reason of such investigation and approval, respondent's school has been and is officially recognized as an accredited university.

Through the use of the words "Institute of Engineering and Science" in his trade name, respondent represents and implies that his school is an institute within the generally accepted meaning of that term; that is, that his school was established and is maintained for the purpose of considering and studying engineering and scientific problems and conducting research, and that it has the necessary facilities and personnel to carry on the work of an institute.

PAR. 5. Respondent's school was first organized about 1910. On two occasions it has been incorporated, but in each instance the corporate charter was allowed to lapse for nonpayment of certain fees and assessments. Since about 1933 respondent has been operating his school as an individual enterprise. The school is conducted from the residence in which respondent lives, and which also serves as his law office, the residence being some 30 by 60 feet in dimensions and having three stories and a basement. Respondent currently has enrolled some 4,000 students and a considerably larger number of "inactive" students, the latter being persons who have subscribed for courses of instruction but have not continued regularly in their studies.

While the prices of the various courses of study differ, the average price is about \$150, payable in installments. When a student enrolls, he is supplied with certain textbooks, and from time to time thereafter mimeographed lessons and questions are mailed to him. The lessons and schedule of payments covering the price of the course are usually arranged in such manner that as each additional payment is made another lesson is forwarded to the student. Upon the completion of the course the student is awarded a so-called diploma, and, frequently, a document designated by respondent as a degree, as well. Aside from the payment of the initial installment of the price charged by respondent for the course of study chosen, there are no entrance requirements. Any person may enroll for any of the courses offered. The school has no resident students. It has no library or laboratory facilities.

Respondent was a student at the University of Tennessee for 2 years and at Lehigh University for 2 years, but did not graduate from either of these institutions. Subsequently, he attended Princeton University for 2 years, graduating with the degree of Bachelor of Science. He then attended the University of Berlin for about 1 year, but received no degree from that institution. All of this training was some 50 to 60 years ago. Respondent is an attorney at law and is, or has been at various times, a member of the bar in Tennessee, Missouri, and Illinois. While the record indicates that he has

had little or no special training in any field of learning except that of law, respondent contends that he is fully qualified to teach all of the approximately 37 subjects in which courses of study are offered by his school, including medicine, dentistry, and several branches of engineering.

The only other person connected with the school who claims to possess any advanced education is a man who is employed by respondent somewhat in the capacity of an assistant, and who appears from the record to hold the degree of Bachelor of Science from the University of Mexico. The other duties in connection with the school are performed by a group of some six or eight Spanish or Mexican girls, none of whom has had more than a high-school education. These girls are employed primarily as translators, and to perform clerical duties such as the typing and mimeographing of lessons and the mailing of such lessons to students. At times, however, these girls assist also in the grading of completed lessons returned to the school by the students.

Respondent's claim that his school is "officially recognized" is based entirely on the fact that in April 1938, he obtained from the superintendent of public instruction of the State of Illinois a letter purporting to give official recognition to the school. Upon obtaining this letter, respondent proceeded to make wide use of it in his advertising. It appears, however, that this letter was issued provisionally, pending an investigation and inspection of the school. In January 1939, after investigation had been made, another letter was addressed to respondent by the authorized representative of the superintendent, revoking the former letter and expressly stating that respondent's school was not recognized by the Department of Public Instruction of Illinois. Subsequent to the issuance of the second letter, reports reached the Department that respondent was continuing to use the original letter, and in August 1940, a third letter was addressed to respondent by the same representative of the Department, referring to the second letter and concluding with the statement:

I trust that it is perfectly clear to you that your institution does not have the authority to grant degrees nor is it recognized by this Department, and that you have not used this information in your correspondence or advertising since that time. (Com. Ex. No. 30)

Despite the issuance of this third letter, respondent has continued to capitalize in his advertising upon the original letter, and to use it as a basis for his claim that his school enjoys recognition.

As a further means of creating the impression that his school and the so-called diplomas and degrees issued by it enjoy official recognition, respondent has engaged in the practice of attaching to such

diplomas and degrees the certificates of notaries public and other public officials. For example, there appears in the record a document (Com. Ex. No. 50) purporting to confer upon the individual named therein the degree of Doctor of Laws. This document bears the signatures "Joseph G. Branch, President" and "M. J. Patrance, Secretary," as well as the signature of a "registrar." Attached to the document are the following certificates: (1) certificate of a notary public of Cook County, Ill., to the effect that the persons whose names appear on the document have appeared before him and acknowledged that they executed the instrument; (2) certificate of the county clerk of Cook County, Ill., to the effect that the notary public executing the first certificate was in fact a notary public of Cook County; (3) certificate of the secretary of state of the State of Illinois to the effect that the signer of the second certificate was in fact the County Clerk of Cook County.

While all of these certificates are in fact nothing more than verifications or authentications of signatures and have no actual bearing on the value of the document itself, it is apparent from the record that respondent's purpose in having the certificates affixed to the document was to further the impression in the mind of the recipient of the document and of others to whom it might be exhibited that respondent's school and his diplomas and degrees enjoy official recognition in the United States. Respondent has at times also obtained and attached to his diplomas the certificate of the consul of the country in which the recipient resided. Efforts have also been made by respondent to have the Department of State of the United States authenticate the signature of the secretary of State of Illinois.

Many of respondent's students are enrolled through the recommendation of former students, and respondent's practice of attaching such certificates to his diplomas and degrees has a tendency to mislead prospective students into the belief that respondent's school is officially recognized in the United States and that its diplomas and degrees possess a value comparable with those issued by regular colleges and universities. Such erroneous impression is made all the stronger by reason of the fact that while the diploma or degree is written in the Spanish language the certificates are in English, and the recipient and others are usually unable to discern the actual purport of the certificates. Diplomas and degrees obtained from colleges and universities in the United States are highly valued by citizens of South and Central American countries, and it is difficult if not impossible for such citizens to distinguish between diplomas and degrees issued by such colleges and universities and documents purporting to be diplomas and degrees but which in fact are wholly without academic value.

The record further discloses that the purported signature "M. J. Patrance, Secretary" appearing on the document referred to above was not in fact executed by the individual in question but was affixed to the document by respondent himself. During the period when respondent's school was incorporated, the secretary of the corporation was a Miss M. J. Patrance. After the corporate charter lapsed, Miss Patrance continued in respondent's employ as his secretary. She died in April 1940, but subsequent to her death respondent continued to sign her name to his diplomas and other documents in the same manner as he had done previously. In the case of the specific document referred to above, the name of Miss Patrance was affixed by respondent more than a year after her death.

PAR. 6. The Commission finds from the facts herein set forth that respondent's school has not been approved by any agency of the United States Government or any State of the United States, and that the school enjoys no official recognition of any nature. The purported diplomas and degrees awarded by respondent are not accepted or recognized by any reputable educational institution, and are in fact worthless in the academic and scientific world. Respondent's school is neither a university nor an institute, and is not an institution of higher learning of any kind, and the use by respondent in connection with his school of the term "University" or "Institute" or any other term of similar import is wholly unwarranted, and is misleading and deceptive to prospective students and the public generally.

PAR. 7. The Commission finds further that the acts and practices of respondent as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public in Central and South American countries with respect to the character of respondent's school and the value of respondent's courses of study and of the purported diplomas and degrees conferred by respondent, and the tendency and capacity to cause such portion of the public to purchase respondent's courses of study as a result of such deception. In consequence thereof, substantial trade has been diverted unfairly to respondent from his competitors, among whom are those who do not engage in such 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 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, Joseph G. Branch, individually, and trading as Joseph G. Branch Institute of Engineering and Science, 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 courses of study or instruction, do forthwith cease and desist from:

1. Using the word "Institute," or any abbreviation or simulation thereof, as a part of respondent's trade name or as a part of the name of respondent's school; or otherwise representing, directly or by implication, that respondent's school is an institute or that it was organized or established or is equipped to carry on the work of an institute.

2. Using the word "University," or any abbreviation or simulation thereof, to designate, describe, or refer to respondent's school; or otherwise representing, directly or by implication, that the business conducted by respondent is a university or an educational institution of higher learning.

3. Representing, through the use of the word "University," or any other word, or by any other means, that respondent's school is an educational institution of higher learning with power to confer degrees.

4. Representing, through the issuance of so-called degrees or other documents which purport to have been issued by a duly qualified educational institution of higher learning authorized to confer academic or scientific title or rank, that respondent's school is a university or institution of higher learning.

5. Using the words "officially recognized," or any other word or words of similar import, in connection with respondent's school; or otherwise representing, directly or by implication, that respondent's

school is recognized or approved as an institution of learning by the United States Government or any State of the United States, or by any agencies thereof.

6. Representing, through the use of certificates of acknowledgment or authentication executed by notaries public or other public officials and affixed to so-called diplomas and degrees or other similar documents, that respondent's school is an institution of learning recognized by the Government of the United States or by any State of the United States.

7. Representing in any other manner or by any other means, either directly or indirectly, that respondent's school is an accredited institution, or that the so-called diplomas or degrees or any other similar documents issued by it are recognized or accepted by any governmental agency or any reputable college or university.

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

36 F. T. C.

IN THE MATTER OF

PETER ANASTASOFF AND JAMES ANASTASOFF,
TRADING AS PURITY CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4872. Complaint, Nov. 23, 1942—Decision, Jan. 5, 1943*

Where two individuals, engaged in the manufacture and competitive interstate sale and distribution of candy, including certain assortments which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumer; typical assortment consisting of 20 candy bars and 130 small caramels, together with a three-section push card for use in sale and distribution of said candy under a plan, as explained thereon, by which those securing by chance certain numbers concealed within the card received for the penny paid, in addition to a caramel, one of said bars, and maker of last punch in each section received, in addition to the caramel received by all, two candy bars;

Sold such assortments to wholesalers, jobbers, and retailers by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, under which fact as to whether purchaser received one of the candy bars or one of the small caramels for his penny was determined wholly by lot or chance; and thereby supplied to and placed in the hands of others means of conducting a lottery in sale of their merchandise in accordance with aforesaid plan, involving the sale of a chance to procure candy bars at much less than their normal retail price; contrary to an established public policy of the United States Government, and in competition with many who do not use such or any method involving game of chance to win by chance, or other method contrary to public policy;

With the result that persons were attracted by said plan employed by such individuals in sale and distribution of their product and by element of chance involved therein, and were thereby induced to buy and sell their candy in preference to that of said competitors, with tendency and capacity to divert unfairly trade in commerce to them from their competitors aforesaid; to the substantial injury of competition:

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

and James Anastasoff, individually, and trading under the name Purity 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Peter Anastasoff and James Anastasoff, are individuals, trading as copartners under the name of Purity Candy Co., with their principal office and place of business located at 1135 N. Sixth Street, St. Louis, Mo. Respondents are now and for more than 1 year last past have been engaged in the manufacture and in the sale and distribution of candy to wholesalers, jobbers, and dealers. Respondents cause and have caused said candy when sold to be shipped or transported from their aforesaid place of business in the State of Missouri to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now and for more than 1 year last past has been a course of trade by said respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business respondents are and have been in competition with other individuals and with firms, and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof respondents sell and have sold to dealers, wholesalers and jobbers certain assortments of the said candy so packed and assembled as to involve the use of a game of chance, gift prize or lottery scheme when said candy is sold and distributed to the consumers thereof. One of the said assortments is sold and distributed the purchasing public in the following manner:

This assortment consists of 20 candy bars and 130 small pieces of caramel candy with which is packed a device commonly called a push card. The push card is divided into three sections and each of said sections contains 50 partially perforated disks on the face of which is printed the word "Push." Concealed within each of said disks is a number which entitles the purchaser thereof to one of the candy bars without additional cost when said number corresponds with any of the numbers set out in the legend at the top of said push card. The last disk pushed out of each section also entitles the purchaser thereof to receive two candy bars. The sales are 1 cent each and those not securing a number entitling them to one of the

Complaint

36 F. T. C.

candy bars receives one of the pieces of caramel candy. The said card bears a legend as follows:

JOBBER'S ADVERTISER

Nos. 2, 5, 8, 11, 16, 19, 24, 27, 30, 33, 36, 39, 42, 45, Each Receive ONE CANDY BAR ALL OTHER NUMBERS RECEIVE ONE PIECE LAST PUNCH IN EACH SECTION RECEIVES 2 CANDY BARS Notice—This is not a gambling device. Every punch receives full value. Extra awards for advertising. 150-20B.

Sales of respondents' candy by means of said push card are made in accordance with the above legend. The numbers are effectively concealed until a purchase has been made and the disks separated or removed from the said card. The fact as to whether the purchaser receives one of the candy bars or one of the small caramels for his purchase price is thus determined wholly by lot or chance.

The respondents sell and distribute various assortments of candy involving lot or chance features when said assortments are sold and distributed to the purchasing public by such assortments and the methods of sale and distribution thereof are similar to the ones above described.

PAR. 3. Retail dealers and others who purchase respondents' candy directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of the merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy bars at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents as above alleged 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. Persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their candy and by the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said com-

petitors of respondents who do not use the same or equivalent methods.

The use of said methods of respondents because of said game of chance has a tendency and capacity to 'unfairly divert trade in commerce between and among various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods and as a result thereof substantial injury is being done and has been done by respondents to competition in commerce between and among various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 23, 1942, issued and thereafter served its complaint in this proceeding upon respondents, Peter Anastasoff and James Anastasoff, individuals, trading as Purity Candy Co., charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On December 18, 1942, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Peter Anastasoff and James Anastasoff, are individuals, trading as copartners under the name of Purity Candy Co., with their principal office and place of business located at 1135 N. Sixth Street, St. Louis, Mo. Respondents are now and for more than 1 year last past have been engaged in the manufacture and in the sale and distribution of candy to wholesalers, jobbers, and dealers. Respondents cause and have caused said candy when sold to be shipped or transported from their aforesaid place of business

in the State of Missouri to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now and for more than 1 year last past has been a course of trade by said respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business respondents are and have been in competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof respondents sell and have sold to dealers, wholesalers, and jobbers certain assortments of the said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment consists of 20 candy bars and 130 small pieces of caramel candy with which is packed a device commonly called a push card. The push card is divided into three sections and each of said sections contains 50 partially perforated disks on the face of which is printed the word "Push." Concealed within each of said disks is a number which entitles the purchaser thereof to one of the candy bars without additional cost when said number corresponds with any of the numbers set out in the legend at the top of said push card. The last disk pushed out of each section also entitles the purchaser thereof to receive two candy bars. The sales are 1 cent each and those not securing a number entitling them to one of the candy bars receive one of the pieces of caramel candy. The said card bears a legend as follows:

JOBBER'S ADVERTISER

Nos. 2, 5, 8, 11, 16, 19, 24, 27, 30, 33, 36, 39, 42, 45, Each Receive ONE CANDY BAR ALL OTHER NUMBERS RECEIVE ONE PIECE LAST PUNCH IN EACH SECTION RECEIVES 2 CANDY BARS Notice—This is not a gambling device. Every punch receives full value. Extra awards for advertising. 150-20B.

Sales of respondents' candy by means of said push card are made in accordance with the above legend. The numbers are effectively concealed until a purchase has been made and the disks separated or removed from the said card. The fact as to whether the purchaser receives one of the candy bars or one of the small caramels for his purchase price is thus determined wholly by lot or chance.

The respondents sell and distribute various assortments of candy involving lot or chance features when said assortments are sold and distributed to the purchasing public, but such assortments and the methods of sale and distribution thereof are similar to the ones above described.

PAR. 3. Retail dealers and others who purchase respondents' candy directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondents thus supply to and place in the hands of others a means of conducting a lottery in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of the merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy bars at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, as above 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. Persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their candy and by the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods.

The use of said methods by respondents because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being done and has been done by respondents to competition in commerce between and among various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices 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 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, Peter Anastasoff and James Anastasoff, individually, and trading as Purity Candy 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 candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Selling or distributing candy or any merchandise so packed and assembled that sales of said candy or other 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 respondents, may be made by means of a game of chance, gift enterprise or lottery scheme.

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

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

Syllabus

IN THE MATTER OF
THE SHERWIN-WILLIAMS CO., THE LOWE BROTHERS
COMPANY, AND JOHN LUCAS & COMPANY, INC.

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

Docket 3965. Complaint, Dec. 8, 1939—Decision, Jan. 8, 1943

Where three corporations, namely, the parent company and two subsidiaries, engaged in the manufacture and competitive interstate sale and distribution of paints and paint products which, in the case of said parent concern, were advertised, known, and sold on a Nation-wide scale through its extensive organization, and, in the case of the other two, on a more restricted scale in different sections of the country;

Selling their said products through separate organizations which, while competitive to some extent, reflected their relationship through one or more common officers or directors; doing a business running into many millions of dollars and selling and distributing through and to thousands of authorized dealers and many chain or line lumber yards and wholly owned retail stores; and making use, as respects matters herein concerned, of their "1938 plan" under which discounts off dealers' list of from 6 to 14 percent were contingent upon quantities ordered, ranging from 24 gallons up to carloads and truckloads, and of their "1939 plan" under which total dollar purchases for a given year determined the discount for the year ensuing—

- (a) Discriminated in price against independent dealer purchasers under the 1938 plan through extending to their chain lumberyard customers and to other customers operating two or more stores, the privilege of pooling the orders placed by their unit stores; and granting and allowing on the total gallonage the 10-, 8-, and 6-percent discounts off dealers' list prices for the combined orders, which, in other respects, were treated and delivered as separate orders; and

Where said parent concern—

- (b) Discriminated in price, as aforesaid, by granting and allowing to some of its chain lumberyard customers a flat 10 percent discount off dealers' list prices on all their purchases of trade sale items, irrespective of size;

With the result that the customers concerned, through taking advantage of said pooling privilege or 10 percent flat discount, received better prices for their unit stores—which generally received as much attention in sales and other assistance as did independents with comparable business in the same territory—than their independent dealer competitors whose "per order" purchases might have been even greater than those of said unit stores, the resulting differentials oftentimes amounting to as much as 10 percent; and

- (c) Discriminated in price in favor of certain of its dealers and distributors through accumulating their orders for a week, or sufficiently long period to enable the purchaser to earn the maximum quantity discounts, and granting and allowing to them, under the 1938 plan, the 10-, 8-, and 6-percent discounts off dealers' list prices which resulted from the gallonage represented by the orders thus accumulated; and

Where one of said subsidiaries which (1) maintained a warehouse in a building owned by a dealer-customer, competitor of the customers of said corporations and of other subsidiaries of said parent concern, and of latter's competitors; and which (2) at least adequately compensated said dealer-customer through paying it a 10-percent commission of the net amount of said subsidiary's paint products shipped out of such warehouse to the subsidiary's customers by said dealer-customer—

- (d) Discriminated in price against other of its dealers through granting and allowing aforesaid dealer-customer, under said 1938 plan, in addition to said 10-percent commission or compensation for warehousing and services in connection therewith, a 12-percent discount from dealers' list prices on all the purchases of such customer-dealer, estimating that, lacking said warehouse, it would have earned such discounts by carload and 84 gallon or greater l. c. l. shipments; and

Where said two subsidiaries which (1) in common with said parents concern customarily allowed functional discounts to customers who qualified as jobbers, wholesalers, or distributors, and to such dealers as performed jobber or distributor functions to the extent that they did so only; which (2) accepted, for the purpose of computing functional discounts, statements of their dealers as to the percentage that latter's distributor, i. e., dealer-to-dealer, business bore to their entire business, with resulting discrimination, in favor of some; and which (3) were in competition with many paint concerns selling directly, particularly in the metropolitan centers, to painters, master painters, painting contractors, and maintenance accounts, i. e., hotels, apartment houses, real estate corporations, insurance companies, commercial stores, industrial concerns, etc.—frequent buyers of paint in quantities of 4 gallons or more, and customarily at better prices than those paid by occasional consumers—and which concerns when they desire to secure substantial proportion of painter-maintenance business, customarily employ outside salesmen, provide delivery service, and oftentimes operate a credit department—

- (e) Discriminated in price in favor of some but not all of their dealers and dealer-distributors in particular localities through granting and allowing them functional or special discounts on nondealer business, i. e., purchases resold to painters, painting contractors, and maintenance accounts as above set forth;
- (f) Discriminated in the case of one or the other, as above set forth, (1) in favor of aforesaid "warehouse customer"—which sold no portion of the products purchased to other dealers, but sold substantially all to regular and occasional consumers, chiefly, painters, etc., as above set forth, through additional discounts, including one "in lieu of carload quantity"; and (2) through additional discounts similarly discriminated in favor of a customer of the other subsidiary, which similarly sold to consumers only, its purchases;
- (g) Discriminated in price in favor of some of their dealers and dealer-distributors on the purchases which they resold direct to the consumer through their retail departments or wholly owned branch stores, in competition with customer-dealers of said subsidiaries, or of parent concern, or of other sellers, through granting them functional or special discounts, on the basis of dealer-to-dealer business, in excess of such business, if any, done by them;

Effect of which discriminations, not shown as justified, had been and might be substantially to lessen competition with said parent concern or subsidiaries in the line of commerce in which they were engaged, and to injure, destroy, or prevent competition with them and with their customers who received benefit of discriminations aforesaid:

Held, That such acts and practices were in violation of section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. S. G. Churchill and *Mr. William C. Kern* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., and *Mr. T. J. McDowell*, of Cleveland, Ohio, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (U. S. C., title 15, section 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 respondent, The Sherwin-Williams Co.; the respondent, The Lowe Brothers Co.; and the respondent, John Lucas & Co., Inc., since June 19, 1936, have been and now are violating the provisions of subsection (a) of section 2 of said act as amended, issues its complaint against said respondents and states it charges with respect thereto as follows, to wit:

PARAGRAPH 1. The Sherwin-Williams Co., is a corporation, organized and existing under the laws of the State of Ohio and has its principal executive office and place of business at 1200 Midland Building, Cleveland, Ohio.

PAR. 2. The Lowe Brothers Co., is a corporation, organized and existing under the laws of the State of Ohio and has its principal executive office and place of business at 424 East Third Street, Dayton, Ohio.

PAR. 3. John Lucas & Co., Inc., is a corporation, organized and existing under the laws of the State of Maryland and has its principal executive office and place of business at 322 Race Street, Philadelphia, Pa.

PAR. 4. *Definitions*.—Except where the context requires another or different meaning, the following abbreviations and terms, for the purposes of this complaint, shall be understood to have the following meanings:

1. The Sherwin-Williams Co. (except for the allegations contained in paragraphs 1 and 5 hereof) means the corporate entity by that

name, acting by and through itself as an operating company and by and through its wholly owned operating subsidiaries, The Lowe Brothers Co. and John Lucas & Co., Inc., and by and through its other operating subsidiaries, and in its capacity of controlling the policies and activities of itself and said subsidiaries.

2. Sherwin-Williams means The Sherwin-Williams Co., solely in its capacity as an operating company, engaged in the manufacture, sale, and distribution of paint products.

3. Lowe Brothers means (except for the allegations contained in paragraph 2 hereof) The Lowe Brothers Co. and The Sherwin-Williams Co., solely by and through its wholly owned operating subsidiary The Lowe Brothers Co.

4. Lucas means (except for the allegations contained in paragraph 3 hereof) John Lucas & Co., Inc., as an operating company or by and through its wholly owned operating subsidiary W. W. Lawrence & Co., and The Sherwin-Williams Co., solely by and through its wholly owned operating subsidiaries, John L. Lucas & Co., Inc., and W. W. Lawrence & Co.

5. Manufacturers means Sherwin-Williams, Lowe Brothers and Lucas.

6. Seller means a person, partnership, or corporation (other than the manufacturers or The Sherwin-Williams Co.) engaged in the manufacture, sale and distribution of paint products.

7. Painters and Paint Contractors mean a person, partnership, or corporation, engaged in the business of utilizing and applying paint products, (1) that customarily includes the paint products to be used on a painting job in estimates made to procure such job or, in the alternative, that makes arrangements with the person with whom the contract to do the paint job has been made to furnish the paint to be used on the job at a stipulated price and (2) that customarily purchases paint in quantities of 4 gallons or more.

8. Maintenance Account means hotels, apartment houses, real estate corporations, insurance companies, commercial stores, industrial concerns, etc., that buy paint fairly frequently and customarily in quantities of 4 gallons or more.

9. Regular Consumer means painters, paint contractors, and maintenance accounts.

10. Occasional Consumer means a person, partnership, or corporation that buys paint products infrequently and customarily in very small quantities, rarely as much as 4 gallons.

11. Dealer means a person, partnership, or corporation that operates a retail establishment or store and is regularly engaged during

customary business hours in the sale of merchandise, including paint products, to occasional and/or regular consumers.

12. Line Yard Lumber Company or Chain Lumberyard means a person, partnership, or corporation that operates a number of retail establishments or stores, the individual establishments or stores (hereinafter referred to as "unit stores") (1) being customarily located in different communities, towns, or cities, some of said communities, towns, and cities oftentimes being in different States from others of said communities, towns, and cities, and (2) being regularly engaged in the sale of lumber and other merchandise, including paint products, to occasional and/or regular consumers. (Originally, the unit stores of any particular chain were located in communities, towns, or cities served by one branch of one railroad, but that is not necessarily true today, and may even represent the exceptional situation.)

13. Jobber or Distributor means a person, partnership, or corporation engaged in the business of buying and receiving paint products from the manufacturers or sellers thereof and of selling and shipping paint products to and in servicing, billing, and carrying dealer customers.

14. Specification Paint means paint manufactured according to a special formula prepared to meet the special requirements or demands of a large consumer, customarily a governmental body, a railroad, or a large industrial concern.

15. Trade Sale Line or Trade Item means standard products of the manufacturers or of other sellers, sold under trade mark bearing the name of the manufacturer or seller, including, among other products, exterior and interior house paint, roof, barn, and metal paint, varnishes and lacquers.

16. Companion Line means standard products of the manufacturers or of other sellers which are less expensive than the trade sale line products and not always sold under trade mark bearing the name of the manufacturer or seller.

17. Allied Line means miscellaneous products such as dry colors, bronzes, linseed oil, turpentine, alcohol, lead, and insecticide materials.

18. Paint Products means trade sale line, companion line (in the case of those companies that manufacture such a line) and allied line only.

19. General Scheme of Distribution means the general practice of the manufacturers pursuant to which they (a) sell directly to governmental bodies, railroads, and large industrial consumers their requirements of paint, usually specification paint; (b) sell directly to painting contractors having large volume the requirements of such contractors of specification paint and paint products; and (c) sell paint products

Complaint

36 F. T. C.

indirectly through dealers, chain lumberyards, distributors, retail branches, and others to the occasional and/or regular consumers of paint.

PAR. 5. The Sherwin-Williams Co. owns 100 percent of the issued and outstanding equity stock and controls the policies and activities of the following corporations:

The Lowe Brothers Co.

John Lucas & Co., Inc.

Acme White Lead and Color Works of Hamtramck, Mich., and Martin Senour Company of Chicago, Ill.

each of which is engaged in the manufacture, sale, and distribution of trade sale and allied line paint products.

The Sherwin-Williams Co. owns a majority of the issued and outstanding equity stock and controls the policies and activities of the following corporation:

Detroit White Lead Works of Hamtramck, Mich.

which is engaged in the manufacture, sale, and distribution of trade sale and allied line paint products.

John Lucas & Co., Inc., owns 100 percent of the issued and outstanding equity stock of, and The Sherwin-Williams Co., by and through said John Lucas & Co., Inc., controls the policies and activities of, the following corporation:

W. W. Lawrence & Co. of Pittsburgh, Pa.

which is engaged in the manufacture, sale, and distribution of trade sale and allied line paint products.

Acme White Lead and Color Works owns 100 percent of the issued and outstanding equity stock of, and The Sherwin-Williams Co., by and through said Acme White Lead and Color Works, controls the policies and activities of, the following corporations:

Peninsular Paint and Varnish Company of Hamtramck, Mich., Lincoln Paint and Color Company of Lincoln, Nebr.

each of which is engaged in the manufacture, sale, and distribution of trade sale and allied line paint products.

PAR. 6. For many years prior to and since June 19, 1936, Sherwin-Williams has been and now is engaged in the business of manufacturing, selling and distributing (1) basic raw materials used in the production of paint, varnishes, and lacquers, (2) specification paint, and (3) paint products. The paint products of Sherwin-Williams are all standardized. In the course and conduct of its business Sher-

win-Williams has been and now is manufacturing said paint products principally at its factories which are located in Cleveland, Ohio; Chicago, Ill.; Newark, N. J.; and Oakland, Calif. That Sherwin-Williams maintains and operates approximately 40 warehouses situated in as many cities in over 25 States of the United States. That Sherwin-Williams, for convenience in selling and delivering its merchandise, maintains and operates district offices, sales division offices, or service stations in over one-half of the cities in which its warehouses are located, and, in addition, maintains and operates a sales office in Washington, D. C., where it has no warehouse. Sherwin-Williams employs several hundred salesmen who call regularly on all classes of customers. The annual net sales of Sherwin-Williams in the United States of paint products alone total approximately \$17,000,000. Such products are sold and distributed through (1) over 6,300 authorized dealers, a number of whom act as distributors with respect to a portion of such paint products purchased by them, (2) over 80 chain lumberyards, (3) approximately 120 wholly owned retail stores, and (4) other miscellaneous mediums.

PAR. 7. For many years prior to and since June 19, 1936, Lowe Brothers has been and now is engaged in the business of manufacturing, selling, and distributing specification paint and paint products. The paint products of Lowe Brothers are all standardized. In the course and conduct of its business, Lowe Brothers has been and now is manufacturing paint products at its factory which is located at Dayton, Ohio; that Lowe Brothers maintains and operates 15 warehouses located in the following cities: Dayton, Ohio; Chicago, Ill.; Kansas City, Mo.; Atlanta, Ga.; Boston, Mass.; Jersey City, N. J.; Cleveland, Ohio; Omaha, Nebr.; Minneapolis, Minn.; Indianapolis, Ind.; Memphis, Tenn.; Jacksonville, Fla.; Forth Worth and Houston, Tex.; and New Orleans, La.; that Lowe Brothers, for convenience in selling and delivering its merchandise maintains and operates district offices in the first 6 of the herein named cities in which its warehouses are located. Lowe Brothers employs a substantial number of salesmen, who call regularly on all classes of customers. The annual net sales of Lowe Brothers in the United States of paint products alone total over \$1,000,000. Such products are sold and distributed through (1) over 1,500 authorized dealers, (2) approximately 70 distributors, and (3) approximately 100 chain lumberyards, (4) 11 wholly owned retail stores, and (5) other miscellaneous mediums.

PAR. 8. For many years prior to and since June 19, 1936, Lucas has been and now is engaged in the business of manufacturing, selling, and distributing specification paint and paint products. The paint products of Lucas are all standardized. In the course and conduct of its

business, Lucas has been and now is manufacturing said paint products at its principal manufacturing plant which is located in Gibbsboro, N. J.; that Lucas maintains and operates 8 warehouses located in Philadelphia, Pa.; Boston, Mass.; New York City; Chicago, Ill.; Albany, N. Y.; Pittsburgh, Pa.; Minneapolis, Minn.; and Wadena, Minn.; that Lucas, for convenience in selling and delivering its merchandise, maintains and operates sales offices in the first 4 of the herein named cities in which its warehouses are located. Lucas employs a substantial number of salesmen who call regularly on all classes of customers. The annual net sales of Lucas in the United States of paint products alone total approximately \$2,000,000. Such products are sold and distributed through (1) approximately 1,500 authorized dealers, (2) approximately 100 distributors, (3) 3 chain lumberyards, (4) 10 wholly owned retail stores, and (5) other miscellaneous mediums.

PAR. 9. In the course and conduct of their respective businesses as aforesaid, the manufacturers transport or cause to be transported some of their paint products, when manufactured, from their respective factories aforesaid to their respective warehouses which are located, as hereinbefore set forth, in various States of the United States, and oftentimes in States other than the States in which their respective factories are located and in which such shipments originated, and transport or cause to be transported their paint products from their respective factories aforesaid or from their respective warehouses aforesaid to the purchasers thereof located in the several States of the United States and in the District of Columbia, other than the States in which their respective factories are located, and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said paint products between the respective factories, warehouses, and distributing points of said manufacturers and purchasers from each of them located in many and, as to Sherwin-Williams in all of the States of the United States and the District of Columbia.

The manufacturers advertise their respective paint products nationally and have created a public demand for such products throughout the States of the United States and the District of Columbia.

The manufacturers sell and distribute their respective paint products for use, consumption, or resale within the United States and in the District of Columbia, in the same States and places as and in competition with various other sellers of paint products. Many of said competing sellers distribute their products nationally, as do the manufacturers, while many of said competing sellers distribute their paint products to customers located within the trading area or areas em-

braced within or adjacent to the trading areas in which their factories are located.

The comparable trade sale line products sold by the manufacturers are of like grade and quality. The Sherwin-Williams customers who sell at retail are occasionally competitively engaged with each other locally, are oftentimes competitively engaged locally with the Lowe Brothers and/or Lucas customers who sell at retail and are almost uniformly competitively engaged locally with the retailer customers of the competitors of The Sherwin-Williams Co., in the resale of said products, said resales taking place in every State of the United States and in the District of Columbia. That a similar situation exists as to the retailer customers of Lowe Brothers and as to the retailer customers of Lucas.

PAR. 10. That, for the purpose of selling and distributing its paint products, Sherwin-Williams has divided the territorial United States into six zones. For each zone, Sherwin-Williams has published the prices that are applicable from time to time, on sales of its paint products to dealers in that zone (hereinafter referred to as "dealers' list prices" and whenever this term is used with respect to Sherwin-Williams, it shall be understood to refer to that one of the six different dealers' list prices issued by Sherwin-Williams that shall be in effect at the time and that shall be applicable to the particular situation or situations under consideration), the differentials in prices between the zones being sufficient, as a rule, to compensate Sherwin-Williams for the differences in the average cost of freight between its factories and its warehouses in the various zones. Sherwin-Williams, as a rule, ships its paint products to its customers f. o. b. the warehouse nearest the customer. In all cases where the customer buys a carload or truckload of 20,000 pounds or more and receives shipment direct from the factory, freight is allowed.

The dealers' list prices herein mentioned, so far as applicable to trade sale items, since June 19, 1936, have been subject to various discounts, depending either upon the total volume of Sherwin-Williams paint products, or certain of them, purchased by one customer during a specified period or upon the quantity purchased by one customer at and for shipment at one time.

On or about January 3, 1938, the Sherwin-Williams Co. put into effect, as to Sherwin-Williams, Lowe Brothers and Lucas, a discount plan (hereinafter referred to as the "1938 Plan") which was operative from that date until on or about September 1, 1939. The 1938 Plan, briefly described, was as follows:

Complaint

36 F. T. C.

To any customer who purchased in one order for shipment at one time less than 24 gallons¹ of trade sale line paint products, no discount was granted from the dealers' list prices (except a 2-percent discount for cash); to any customer who purchased such paint products in one order for shipment at one time to an aggregate of 24 gallons or more, the following scale of discounts applied:

24 to 48 gallons—6 percent off dealers' list on entire order of such items.

48 to 84 gallons—8 percent off dealers' list on entire order of such items.

84 gallons and over—10 percent off dealers' list on entire order of such items.

Carloads and Truckloads (from factory)—14 percent off dealers' list on entire order of such items.

The aforementioned discount was shown on the face of the customer's invoice and the customer was billed for the net price, after the deduction of the per order discount.

On or about September 1, 1939, The Sherwin-Williams Co. altered the 1938 Plan herein described and now employs, as to Sherwin-Williams, Lowe Brothers and Lucas, a discount plan (hereinafter referred to as the "1939 Plan"), pursuant to which discounts from dealers list prices are dependent upon the annual volume of trade sale items purchased by a customer, with one exception herein-after noted. Under the 1939 plan, a customer purchasing less than \$500 worth of such products during a year receives a 5 percent discount from dealers list prices. This is tantamount, as to those customers heretofore purchasing such items in quantities of less than 24 gallons per order, to a general price reduction of 5 percent. A customer purchasing more than \$500 worth of such products during 1 year receives an additional 5 percent discount. Such a customer pays 95 percent of dealers list prices, less 5 percent of such prices as so reduced. Such discounts are given on the face of the customer's invoice. Whether a particular customer is entitled to receive the 5 percent or the 5-5 percent discount is determined by averaging his purchases of such items over the 3-year period immediately preceding the inauguration of the 1939 Plan. A customer purchasing in carloads or truckloads and receiving shipment direct from the factory receives a further 5 percent discount. As to such a customer, the present base price of 95 percent of dealers' list prices is reduced by 5 percent thereof and by a further 5 percent of the

¹ Products packaged and priced by the pound were calculated at the rate of 1 gallon to every 12 pounds.

net figure thus obtained, to arrive at the net price which the carload or truckload customer pays.

That it has been and is the general policy and practice of Sherwin-Williams to sell its trade sale line paint products to its dealers and Sherwin-Williams has sold and is now selling such products to such dealers, generally at its dealers' list prices, less whatever discounts may have been or may be applicable under the 1938 or the 1939 Plan.

PAR. 11. That the Lowe Brothers methods of selling and distributing its paint products, so far as concerns the establishment of zones, the publishing of its own dealers' list prices for each zone, the collection of freight charges and the applicability of the 1938 and 1939 Plans to such dealers' list prices, have been and are substantially the same as those of Sherwin-Williams except that Lowe Brothers in shipping its paint products to its customers f. o. b. its warehouse nearest the customer, makes it a practice to equalize the freight charges with the freight charges applicable from that warehouse of a seller or of another of said manufacturers which is nearest to the customer.

That it has been and is the general policy and practice of Lowe Brothers to sell its trade sale line paint products to its dealers and Lowe Brothers has sold and is now selling such products to such dealers, generally at its dealers' list prices, less whatever discounts may have been or may be applicable under the 1938 or the 1939 Plan.

PAR. 12. That the Lucas methods of selling and distributing its paint products, so far as concerns the establishment of zones, the publishing of its own dealers' list prices for each zone, the collection of freight charges and the applicability of the 1938 and 1939 Plans to such dealers' list prices, have been and are substantially the same as those of Sherwin-Williams, with the following exceptions:

1. The territorial United States has been divided into four instead of six zones;

2. Lucas allows freight to destination. The paint products are shipped f. o. b. the warehouse, but the customer is permitted to deduct freight from the net amount of the invoice; and

3. Under a variation of the 1938 Plan applicable to Lucas, customers purchasing in carloads and truckloads of 20,000 pounds or more direct from the factory were allowed a 12 percent rather than a 14 percent discount from dealers' list prices.

That it has been and is the general policy and practice of Lucas to sell its trade sale line paint products to its dealers and Lucas has sold and is now selling such products to such dealers, generally at

its dealers' list prices, less whatever discounts may have been or may be applicable under the 1938 or the 1939 Plan.

PAR. 13. The Sherwin-Williams Co. and each of the manufacturers, in the course and conduct of their business in commerce, has, since June 19, 1936, discriminated in the prices at which it has sold and is now discriminating in the prices at which it is selling its products of like grade and quality between different purchasers of such products by giving and allowing to some of said purchasers, either directly or indirectly, rebates or discounts from its dealers' list prices which have not been given and allowed to others of its purchasers. That the manufacturers and The Sherwin-Williams Co. have effectuated the discriminations in price referred to herein in a variety of ways, some of said ways being more specifically hereinafter described.

PAR. 14. That, for the purpose of granting and allowing the quantity discounts under their respective 1938 Plans, the manufacturers, particularly Sherwin-Williams and Lowe Brothers, have permitted the main office of some chain lumberyard buyers to pool the orders of the unit stores thereof and have granted and allowed to such chain lumberyard buyers the quantity discounts applicable to the gallonage represented by the pooled orders. For example, if the pooled order has totaled over 84 gallons, each unit store through its main office has received a flat 10 percent off dealers' list prices on its purchases of paint products, even though no one unit store may have ordered a sufficient quantity to qualify for any discount. That, with respect to other chain lumberyard buyers, the manufacturers, particularly Sherwin-Williams, have granted and allowed a flat 10 percent discount off dealers list prices, irrespective of the size of the order and irrespective of whether the order represented the pooled requirements of all the unit stores of the chain lumberyard or the individual requirements of only one of the unit stores thereof. That, in either case, the manufacturer granting and allowing the pooling privilege or the flat 10 percent discount did not customarily make shipment of the full order to the main office of the chain lumber yard, but shipped the paint products so ordered to the various unit stores thereof. That the chain lumber yards receiving the flat 10 percent discount from dealers' list prices from one of said manufacturers were, in certain cases, in competition with other chain lumberyards which purchased either from the same or from another of said manufacturers, the latter chain lumberyards not receiving the flat 10 percent discount herein mentioned. That, in some cases, independent dealers who purchased trade sale line paint products from one of the manufacturers and who did not receive either the pooling privilege

or any flat discount, were in competition with the unit stores of chain lumberyards, which received the pooling privilege or the flat 10 percent discount, in some cases, from the same manufacturer and, in other cases, from another of said manufacturers.

PAR. 15. That, for the purpose of granting and allowing the quantity discounts under its 1938 Plan, Sherwin-Williams adopted the practice of accumulating the orders of some of its distributors and dealers, either for a specified period, usually a week, or for a time sufficiently long to enable the particular distributor or dealer to earn the maximum quantity discount for orders of less than carload quantities, and has granted and allowed to such distributors and dealers the quantity discounts applicable to the gallonage represented by the orders so accumulated. For example, Sherwin-Williams totaled the gallonage of all orders received in a period of 1 week from any one of its distributors or dealers in the trading area, known as "Metropolitan New York" and granted and allowed to each such distributor and dealer on each order the quantity discount that would have been applicable, had such gallonage been covered by one order for shipment at one time. This practice usually resulted in the favored distributors and dealers receiving a flat 10 percent off dealers' list prices, irrespective of the size of the individual orders. That, in the cases herein mentioned, Sherwin-Williams nevertheless customarily shipped or delivered to its thus favored distributors and dealers as often as it received orders from them and irrespective of the size of the individual order. That, during the period that the 1938 Plan was operative, neither Lowe Brothers nor Lucas accumulated the orders of their distributors and dealers located in Metropolitan New York or in other trading areas with respect to which Sherwin-Williams adopted this practice.

PAR. 16. That Lowe Brothers granted and allowed to some of its dealers, during the period that its 1938 Plan was in effect, so-called "carload discounts" on purchases by such dealers of relatively small per order quantities of its trade sale line paint products. For example, Lowe Brothers maintains a warehouse in the building at 2063 East Fifty-fifth Street, Cleveland, Ohio, owned by The Cleveland Builders Supply Co. (hereinafter referred to as "Cleveland Builders"), a corporation organized and existing under the laws of the State of Ohio and engaged in the sale and distribution of paint products. Cleveland Builders customarily withdraws its paint requirements daily from said warehouse, but occasionally orders paint products for shipment direct from the Lowe Brothers factory in Dayton, Ohio. Such daily withdrawals or such factory orders rarely, if ever, total 84 gallons and oftentimes do not total 24 gallons. Lowe

Brothers nevertheless granted and allowed to said Cleveland Builders a flat 12 percent "carload discount" on all the latter company's purchases of trade sale line paint products. That Cleveland Builders is in competition in Cleveland and environs with other customers of Lowe Brothers and with the customers of Sherwin-Williams and Lucas and with the customers of the competitors of The Sherwin-Williams Co. in the sale and distribution of paint products.

PAR. 17.

Introductory Allegations

That, in addition to the per order quantity discounts applicable under their respective 1938 plans and generally available to all purchasers from them and the volume discounts and carload or truckload quantity discount applicable under their respective 1939 plans and generally available to all purchasers from them, the manufacturers have granted and allowed and are now granting and allowing to some of their customers, and not to others, certain functional discounts. It is the established policy and practice of the manufacturers to grant and allow functional discounts only to jobbers or distributors and to such dealers that perform the functions of the jobber or distributor, and only in the latter cases, to the extent that such dealers perform such functions. It is not the policy or general practice of the manufacturers to grant or allow functional discounts on paint products which are resold by distributors or dealers (1) directly to regular or occasional consumers or (2) indirectly through retail branches, owned or controlled by the distributors or dealers, to regular or occasional consumers.

That Sherwin-Williams does not have any customers who operate exclusively as distributors, but does grant functional discounts to some of its dealers who perform the functions of a distributor; that such discounts vary from 5 to 12½ percent, although they customarily amount to 7½ and 10 percent. That Sherwin-Williams, as a rule, requires its dealers acting as distributors to submit statements at the end of each month showing the total sales at dealers' list prices made to other dealers during the preceding month. From such total sales, Sherwin-Williams deducts the discounts that have been received by the reporting dealer with respect to the purchases which have been so resold. The applicable percentable functional discount is then applied to the net amount thus obtained to ascertain the sum due the reporting dealer as a functional discount for that month.

Lowe Brothers and Lucas allow a maximum functional discount of 15 percent to their distributors. In the case of dealers performing the functions of a distributor, the functional discount, as a rule,

bears the same ratio to 15 as the percentage of the dealer's distributor business bears to his entire business. In either case, the functional discount is granted and allowed on the face of the invoice. In the case of Lowe Brothers, however, the functional discount is based upon the gross dollar value of the dealer's purchases at dealers' list prices and prior to the deduction of quantity or volume discounts, whereas in the case of Lucas, the functional discount is based upon the net amount of the dealer's purchases at dealers' list prices, after the deduction of the quantity or volume discounts.

A

That Lowe Brothers and Lucas, during the period that their respective 1938 Plans were in effect, permitted a distributor-dealer to combine in one order his purchases for resale to other dealers (on which he was paid a functional as aforesaid) and his purchases for resale at retail and granted and allowed to such distributor-dealer the quantity discount applicable to the combined gallonage. This practice enabled distributor-dealers to procure the trade sale line paint products they resold at retail at a lesser price than was paid for similar products by 100 percent dealers and subdealers of Lucas and Lowe Brothers who were in competition with the distributor-dealers in the sale of such paint products at retail.

B

That the manufacturers have granted and allowed and are now granting and allowing, in addition to quantity or volume discounts, functional discounts to some of their dealers, and not to others, on consumer business. Typical examples of this practice are the following:

(1) Lowe Brothers has granted and allowed and now grants and allows to Cleveland Builders, in addition to the so-called "carload discount" of 12 percent described in paragraph 16 hereof, a functional discount of 15 percent on 50 percent of its purchases of trade sale line paint products from Lowe Brothers or $7\frac{1}{2}$ percent on 100 percent of its purchases. That Cleveland Builders sells substantially all of the paint products it purchases from Lowe Brothers at retail to regular and occasional consumers of paint and does not sell any portion thereof to other dealers. That Cleveland Builders, in the sale of paint products at retail to regular and occasional consumers thereof, is engaged in competition in Cleveland and environs with dealers who purchase, directly or indirectly, either from Lowe Brothers or from one of the

Complaint

36 F. T. C.

other manufacturers or from a seller, and who do not receive any functional discount.

(2) Lucas has granted and allowed and now grants and allows to Landis Spanos, an individual trading in Pittsburgh under the firm name and style of "Spanos Paint Store" (hereinafter referred to as "Spanos"), in addition to quantity or volume discounts, a functional discount of 15 percent on 60 percent of his trade sale line purchases or 9 percent on 100 percent of such purchases. That Spanos sells substantially all of the paint products he purchases from Lucas at retail to regular and occasional consumers of paint and does not sell any portion thereof to other dealers. That Spanos, in the sale of paint products at retail to regular and occasional consumers thereof, is engaged in competition in Pittsburgh and environs with dealers who purchase trade sale line paint products, directly or indirectly, either from Lucas or from one of the other manufacturers or from a seller and who do not receive any functional discount. That a substantial portion of the trade sale line paint products sold by Spanos at retail to regular and occasional consumers of paint are sold at dealers' list prices, the price that retailers in competition with said Spanos pay or would have to pay for said paint products.

(3) Lucas has granted and allowed and now grants and allows to B. Frank Shinn Paint Co., a corporation engaged in the retail distribution of paint and other products in the city of Wilmington, Del. (hereinafter referred to as "Shinn Co."), in addition to quantity or volume discounts, a functional discount of 15 percent on 100 percent of its trade sale line purchases. That Shinn Co. sells substantially all of the paint products it purchases from Lucas to regular and occasional consumers of paint and does not sell any portion thereof to other dealers. That the Shinn Co., in the sale of paint products at retail to regular and occasional consumers thereof, is engaged in competition in Wilmington, Del., and environs with dealers who purchase trade sale line paint products, directly or indirectly, either from Lucas or from one of the other manufacturers or from a seller, and who do not receive any functional discount.

C

That the manufacturers have granted and allowed and are now granting and allowing, in addition to quantity or volume discounts, functional discounts to some of their distributor-dealers who resell to other dealers at less than dealer list prices, irrespective of the size of the orders of said subdealers. A typical example of this situation is the following:

Lowe Brothers has granted and allowed, and now grants and allows to Waite Hardware Co., a corporation engaged in the wholesale and retail distribution of hardware, paint, and other products in the city of Worcester, Mass. (hereinafter referred to as "Waite"), in addition to quantity or volume discounts, a functional discount of 15 percent on 86 $\frac{2}{3}$ percent of its purchases of trade sale line paint products from Lowe Brothers or 13 percent on 100 percent of said purchases. That Waite has knowingly received and now knowingly receives the benefit of said functional discount. That Waite resells such Lowe Brothers paint products in the city of Worcester, Mass., and environs, to dealers there engaged in the retail distribution of paint products, at a flat 4 percent discount off dealers' list prices, irrespective of the size of the individual orders received by Waite from said dealers. That the dealers to whom Waite resells are competitively engaged in the sale of paint products at retail in Worcester, Mass., and environs with Waite and other dealers who purchase trade sale line paint products, directly or indirectly, either from Lowe Brothers or from one of the other manufacturers and who pay dealers list prices for the paint products so purchased, without the benefit of said flat 4 percent discount, irrespective of the size of the order.

D

That the manufacturers have granted and allowed and are now granting and allowing, in addition to the quantity or volume discounts, functional discounts to some of their distributors who resell at less than dealers' list prices, irrespective of the size of the order, (1) to dealers in which the distributor has a substantial financial interest, and (2) to dealers which own all or substantially all of the issued and outstanding stock of the distributor. Typical examples of this method of effecting price discriminations are the following:

(1) Roy Harpester is an individual residing in Newark, Ohio, and has been engaged in the retail hardware business for over 17 years; Roy Harpester at the present time owns the following financial interests in the following partnerships, each of which is engaged in the retail hardware business, in the following cities:

Extent of interest	Name of partnership	Location
$\frac{1}{2}$	Harpester & Daugherty.....	Newark, Ohio.
$\frac{1}{2}$	Harpester & Zollinger.....	Thornville, Ohio.
$\frac{2}{3}$	Harpester & Paulson	Mt. Vernon, Ohio.
$\frac{1}{2}$	Harpester & Daugherty.....	Rushville, Ohio.

and, in addition thereto, said Harpester and one Helser together own over one half of the issued and outstanding equity stock of the Martin

Complaint

36 F. T. C.

Winter Hardware Co. of Lancaster, Ohio, a corporation likewise engaged in the retail hardware business (said partnerships and said corporation being hereinafter collectively referred to as the "Harpester stores").

Early in 1938 Roy Harpester, in his individual capacity, leased a small, two-story warehouse in the city of Newark, Ohio, and shortly thereafter said Harpester as an individual and trading under the firm name and style of "Union Hardware Co." (said Roy Harpester as an individual and trading under the firm name and style of "Union Hardware Co." being hereinafter sometimes referred to as "Union Hardware") began to purchase hardware supplies and paint products direct from the manufacturers thereof at jobbers prices, all of said products being purchased for resale to the Harpester stores or for resale to other retail hardware dealers. Roy Harpester is in charge of and has control over the purchases and sales of Union Hardware and the purchases and sales of the various Harpester stores.

Early in 1938, Lucas agreed to sell its paint products to Union Hardware at jobbers prices. The Lucas price to Union Hardware for trade sale items from such date, until or on about September 1, 1939, was the dealers' list, less the per order quantity discounts applicable to the varying quantities purchased, less a functional discount of 15 percent. From on or about September 1, 1939, to the present time, the price has been dealers' list, less the various discounts applicable under the 1939 Plan, less a functional discount of 15 percent. That Union Hardware has knowingly received and now knowingly receives the benefit of this 15 percent functional discount. That Lucas salesmen solicit both the Harpester stores and the independent retail hardware dealers to whom Union Hardware sells, referring all orders to Union Hardware. That only a small portion of the space contained in the Union Hardware warehouse is devoted to the storing of the paint products procured from Lucas by Union Hardware.

Union Hardware sold and now sells Lucas trade sale line paint products to the Harpester stores and to independent retail stores at a flat 10 percent off dealers' list prices, irrespective of the size of the individual orders received from said stores. That the bulk of the individual orders received by Union Hardware from the herein mentioned stores are for quantities of less than 24 gallons. All of said stores are in competition with dealers who purchase such paint products, customarily in quantities of less than 24 gallons per order, at dealers' list prices without the benefit of the flat 10 percent discount, irrespective of the size of the order, either directly or indirectly, from one or more of the manufacturers.

(2) Harry Lampert is an individual residing in Lowell, Mass., and has been engaged in the retail hardware business for over 12 years; Harry Lampert at the present time owns the following financial interests in, and is an officer and director of, the following corporations, each of which is engaged in the retail distribution of hardware, paint, and other products, in the following cities:

Extent of interest	Name of corporation	Location
100%-----	Middlesex Supply Co.-----	104 Middlesex St., Lowell, Mass.
100%-----	Simmons Electric Supply Co., Inc.-----	112 Middlesex St., Lowell, Mass.; 534 Merrimac St., Lowell, Mass.

(said corporations being hereinafter collectively referred to as the "Lampert Owned Stores"); Harry Lampert at the present time owns the following financial interests in, and is an officer and director of the following corporations, each of which is engaged in the retail distribution of hardware paint and other products, in the following cities:

Extent of interest	Name of corporation	Location
1/3-----	Haverill Hardware & Plumbing Supply Co....	Haverill, Mass.; Portsmouth, N. H.; ¹ Dover, N. H. ²
1/3-----	Nashua Hardware & Plumbing Supply Co....	Main Street, Nashua, N. H.
1/3-----	Bangor Plumbing & Supply Co.-----	Broad Street, Bangor, Maine.
1/3-----	Gloucester Hardware & Plumbing Supply Co.	Main Street, Gloucester, Mass.
1/3-----	Lewiston Hardware and Plumbing Supply Co.	71 Lisbon St., Lewiston, Maine.
1/3-----	Waterville Hardware and Plumbing Supply Co.	Main Street, Waterville, Maine.
1/3-----	Woburn Hardware and Plumbing Supply Co.	Main Street, Woburn, Mass.

¹ Irving Lampert, brother of Harry Lampert, is manager of the Haverill store and is the registered owner of one-third of the issued and outstanding equity stock of this corporation. Ben Gordon, brother-in-law of the Lamperts, is the registered owner of the remaining one-third issued and outstanding equity stock of this corporation.

² Haverill Hardware & Plumbing Supply Co. trades in this community under the name of Portsmouth Hardware and Supply Co.

³ Haverill Hardware & Plumbing Supply Co. trades in this community under the name of Dover Hardware & Supply Co.

⁴ Maxwell Saroken is the registered owner of one-third of the issued and outstanding equity stock of this corporation, and Myer Saroken is the registered owner of the remaining issued and outstanding equity stock of this corporation.

⁵ Maxwell Saroken is the registered owner of one-third of the issued and outstanding equity stock of this corporation.

⁶ Maxwell Saroken is the registered owner of one-third of the issued and outstanding equity stock of this corporation.

(said corporations being hereinafter collectively referred to as the "Lampert Stores, Group A"); Harry Lampert at the present time owns the following financial interests in, and is an officer and director of, the following corporations, each of which is engaged in the retail distribution of hardware, paint, and other products, in the following cities:

Extent of interest	Name of corporation	Location
1/3-----	New Hampshire Hardware & Plumbing Supply Co.	Elm Street, Manchester, N. H.
1/3-----	Maine Hardware & Plumbing Supply Co.-----	Congress St., Portland, Maine.
1/3-----	Concord Hardware & Plumbing Supply Co.-----	North Main St., Concord, N. H.

Said corporations being hereinafter collectively referred to as the "Lampert Stores, Group B"); Harry Lampert at the present time is an officer and director of, and may have substantial financial interests in, the following corporations, each of which is engaged in the retail distribution of hardware, paint and other products, in the following cities:

Name of Corporation	Location
Essex Hardware and Plumbing Supply Co.....	Lawrence, Mass.,
New England Pipe and Supply Co.....	Charlestown, N. H.,
Portsmouth Hardware Co.....	Portsmouth, N. H.,
Niagara Hardware and Plumbing Supply Co.....	Niagara Falls, N. Y.

(said corporations being hereinafter collectively referred to as the "Lampert Stores, Group C").

The annual gross sales of hardware, paint, and other merchandise of the Lampert Owned and the Lampert Stores, Groups A and B are in excess of \$2,000,000, and the annual gross sales of said stores in paint products alone amount to approximately \$200,000.

Early in 1937, Lampert, in his individual capacity, purchased certain improved real property located at 25 Middlesex Street, Lowell, Mass., and has been since such date and is now the equitable owner of such improved real property; the improvement on said real property consists of a four-story warehouse, the dimensions of each floor being approximately 300 feet by 60 feet.

On or about April 2, 1937, for the purpose of enabling the retail stores in which he had a financial interest to purchase their requirements at wholesale prices, Harry Lampert caused Atlantic Distributing Co. (hereinafter referred to as "Atlantic") to be incorporated under the laws of the Commonwealth of Massachusetts; Harry Lampert is the Treasurer, a director and the dominating factor in said Atlantic and is the registered owner of one-third of the issued and outstanding equity stock thereof; Harry Lampert is in charge of and has control over both the purchases and sales of Atlantic and the purchases and sales of the Lampert Owned and the Lampert Stores, Group A; Max Saroken, a nephew of said Harry Lampert, is the President of Atlantic and is the registered owner of one-third of the issued and outstanding equity stock of said corporation; Irving Lampert a brother of Harry Lampert, is a clerk for Atlantic and is the registered owner of one-third of the issued and outstanding equity stock of said corporation; Harry Lampert rents the improved real property aforementioned, of which he is the equitable owner, to Atlantic at a nominal rental; that shortly after the organization of Atlantic, Atlantic began to purchase hardware supplies and paint

products directly from the manufacturers thereof at jobbers prices, practically all of said products being purchased for sale through the Lampert Owned Stores or the Lampert Stores, Groups A, B, and C.

On or about the time of the formation of Atlantic, Lucas agreed to sell Atlantic its paint products at jobbers prices. The Lucas price to Atlantic for trade sale items from such date, until on or about September 1, 1939, was the dealers list, less the per order quantity discounts applicable to the varying quantities purchased, less a functional discount of 15 percent. From on or about September 1, 1939, to the present time, the price has been dealers list, less the various discounts applicable under the 1939 Plan, less a functional discount of 15 percent. That Atlantic has knowingly received, and now knowingly receives, the benefit of this 15 percent functional discount. All of the Lampert Owned Stores and all of the Lampert Stores, Group A, handle Lucas products, and the annual gross sales of said stores of Lucas products exceed \$50,000; that Lucas salesmen solicit the Lampert Owned Stores and the Lampert Stores, Group A, and otherwise aid in the sale and distribution of Lucas products to and by all of the stores in which Harry Lampert has a financial interest, referring all orders to Atlantic. That Lucas delivers a substantial portion of the products sold through the Lampert Owned Stores and the Lampert Stores, Group A, directly to said stores and grants, allows and pays with respect to said products so delivered a functional discount of 10 percent. That Atlantic has knowingly, and now knowingly, receives the benefit of this 10 percent functional discount. That Atlantic sells to only one or two stores in which Harry Lampert does not have a substantial financial interest. That approximately three-fourths of one floor of the aforementioned warehouse is utilized for the storage of paint products.

Atlantic sold and now sells Lucas trade sale line paint products to the Lampert Owned and the Lampert Stores, Group A, at a flat 10 percent off dealers list prices, irrespective of the size of the individual orders received from said stores. All of said stores are in competition with dealers who purchase such paint products, at dealers list prices, without the benefit of the flat 10 percent discount, irrespective of the size of the order, either directly or indirectly, from one or more of the manufacturers.

(3) American Hardware Supply Co. (hereinafter referred to as "American"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its main office in Pittsburgh, Pa. All of the issued and outstanding stock of American is owned by approximately 190 persons, partnerships and corporations (hereinafter referred to as "owner stores"), engaged in the retail dis-

tribution of hardware and kindred supplies, including paint products. The great majority of said owner stores are located and do business in the States of Pennsylvania, Ohio, New York, Maryland and West Virginia.

American owns and operates a large warehouse, situated at 4143 Terminal Way, Pittsburgh, Pa. American purchases in its own name from numerous manufacturing concerns and other sources of supply the present and anticipated requirements of the owner stores and of other retail stores that buy from it. American's annual purchases of general hardware merchandise amount to approximately \$1,200,000, and its purchases of paint products alone total over \$70,000.

In 1933 Lucas agreed to sell American its paint products at jobbers prices, and since that date American has handled Lucas paint products almost exclusively. The Lucas price to American for trade sale items from or about January 3, 1938, until on or about September 1, 1939, was the dealers list, less the per order quantity discounts applicable to the varying quantities purchased, less a functional discount of 15 percent. From on or about September 1, 1939, to the present time the price has been dealers list less the various discounts applicable under the 1939 Plan, less a functional discount of 15 percent. That American has knowingly received, and now knowingly receives the benefit of this 15 percent functional discount. That Lucas salesmen solicit the owner stores and assist said owner stores in the sale of Lucas paint products. That the owner stores, with respect to approximately 50 percent of the paint products purchased by them from American, pick up their own purchases at American's warehouse. That Lucas delivers some of the products sold through American directly to the owner stores and grants, allows and pays with respect to said products so delivered a functional discount of 15 percent. That American has knowingly, and now knowingly, receives the benefit of this 15 per cent functional discount.

American sold, and now sells, Lucas trade sale line paint products to the owner stores at a flat 10 percent off dealers list prices, irrespective of the size of the individual orders received from said stores. In addition thereto, the owner stores receive at the end of each year a patronage dividend varying from 4 to 7 percent on the net value of their purchases during the prior year from American of Lucas paint products. That the bulk of the individual orders received by American from the herein mentioned stores is for quantities of less than 24 gallons. All of said owner stores are in competition with dealers who purchase trade sale line paint products, customarily in quantities of less than 24 gallons per order, at dealers list prices without the benefit of the flat 10 percent discount, irrespective of the

size of the order, and without the benefit of any patronage dividend, either directly or indirectly, from one or more of the manufacturers.

E

The manufacturers have granted and allowed, and now grant and allow, functional discounts to some of their distributors that are so identified, from the standpoint both of financial interest and control, with the dealers to whom they allegedly resell that, within the contemplation of the law the distributor, in such cases, is merely an agency through which the dealers, identified with it, purchase; and the granting and allowing of the functional discount to the distributor is tantamount to the granting and allowing of such discount to the dealers to whom the paint products are allegedly resold. Typical examples of such distributors are: Union Hardware, Atlantic Distributing and American.

PAR. 18. The effect of the discriminations in price set forth in paragraphs 13 to 17, inclusive, hereof, may be substantially to lessen competition between The Sherwin-Williams Co., and its competitors; between the customs of a manufacturer in whose favor that manufacturer discriminates and such manufacturer's other customers; between the customers of The Sherwin-Williams Co. in whose favor such discriminations are made and the other customers of The Sherwin-Williams Co.; between the customers of The Sherwin-Williams Co. in whose favor such discriminations are made and the customers of the competitors of The Sherwin-Williams Co.; tend to create a monopoly in The Sherwin-Williams Co. in the line of commerce in which it is engaged; to injure, destroy or prevent competition with each of the manufacturers and with The Sherwin-Williams Co.; to injure, destroy or prevent competition with customers of each of the manufacturers and with customers of The Sherwin-Williams Co. who receive the benefit of such discriminations; to injure, destroy or prevent competition with customers of persons, partnerships and corporations that have knowingly received and are now knowingly receiving the benefit of such discriminations.

Such discriminations in price by each of the manufacturers and by The Sherwin-Williams Co. between different purchasers of goods of like grade and quality in interstate commerce in the manner and form aforesaid, are in violation of the provisions of subsection (a) 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 monop-

lies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress (the Robinson-Patman Act) approved June 19, 1936, the Federal Trade Commission, on December 8, 1939, issued its complaint against the above-named respondents and caused such complaint to be served as required by law, charging that said respondents were and had been discriminating in price between different purchasers from them of commodities of like grade and quality in the course of interstate commerce, in violation of the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

After the respondents had duly filed their answer to said complaint, a stipulation as to certain of the facts was executed on December 6, 1940, with the approval of the Commission, by and between Chief Counsel for the Commission and the attorneys for the respondents. Subsequent thereto, on October 20, 1942, a supplemental stipulation as to certain of the facts was signed and executed by counsel for the respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission. It was agreed therein that the facts stipulated in said supplemental stipulation and in the stipulation of December 6, 1940, together with the exhibits made a part thereof, should constitute the entire record herein with respect to the practices alleged in paragraphs 14 to 16, inclusive, and in subdivision B of paragraph 17 of the complaint herein and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding. In said stipulation respondents expressly waived further hearing as to the facts with respect to such practices, as well as all other intervening procedure with respect thereto, including the filing of briefs and the presentation of oral argument.

Thereafter, this proceeding regularly came on for final hearing upon said complaint, answer, and stipulations, said stipulations having been approved, accepted, and filed, and the Commission, having duly considered the same and being fully advised in the premises, now makes these its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Sherwin-Williams Co., is a corporation, organized and existing under the laws of the State of Ohio and has its principal executive office and place of business at 1200 Midland Building, Cleveland, Ohio.

PAR. 2. The Lowe Brothers Co., is a corporation, organized and existing under the laws of the State of Ohio and has its principal executive office and place of business at 424 East Third Street, Dayton, Ohio.

PAR. 3. John Lucas & Co., Inc., is a corporation, organized and existing under the laws of the State of Maryland and has its principal executive office and place of business at 322 Race Street, Philadelphia, Pa.

PAR. 4. *Definitions.*—Except where the context requires another or different meaning, the following abbreviations and terms, for the purposes of these findings of fact and the order, shall be understood to have the following meanings:

1. The Sherwin-Williams Co. (except where it is obviously used to refer only to the parent company, as in paragraphs 1 and 5 hereof) means the corporate entity by that name, acting by and through itself as an operating company and by and through its wholly owned operating subsidiaries, the The Lowe Brothers Co. and John Lucas & Co., Inc., and by and through its other operating subsidiaries, and in its capacity of controlling the policies and activities of itself and said subsidiaries.

2. Sherwin-Williams means The Sherwin-Williams Co., (parent company only) solely in its capacity as an operating company, engaged in the manufacture, sale and distribution of paint products.

3. Lowe Brothers means (except as used in paragraph 2 hereof) The Lowe Brothers Co. and The Sherwin-Williams Co., solely by and through its wholly-owned operating subsidiary, The Lowe Brothers Co.

4. Lucas means (except as used in paragraph 3 hereof) John Lucas & Co., Inc., as an operating company or by and through its wholly-owned operating subsidiary W. W. Lawrence & Co., and The Sherwin-Williams Co., solely by and through its wholly-owned operating subsidiaries, John L. Lucas & Co., Inc., and W. W. Lawrence & Co.

5. Manufacturers means Sherwin-Williams, Lowe Brothers and Lucas.

6. Seller means a person, partnership or corporation (other than the manufacturers or The Sherwin-Williams Co., or one of its other subsidiaries) engaged in the manufacture, sale, and distribution of paint products.

7. Painters and Paint Contractors means a person, partnership, or corporation, engaged in the business of utilizing and applying paint products, (1) that customarily includes the paint products to be used on a painting job in estimates made to procure such job or, in the alternative, that makes arrangements with the person with whom

the contract to do the paint job has been made to furnish the paint to be used on the job at a stipulated price, and (2) that customarily purchases paint in quantities of four gallons or more.

8. Maintenance Account means hotels, apartment houses, real estate corporations, insurance companies, commercial stores, industrial concerns, etc., that buy paint fairly frequently and customarily in quantities of four gallons or more.

9. Regular Consumer means painters, paint contractors and maintenance accounts.

10. Occasional Consumer means a person, partnership, or corporation that buys paint products infrequently and customarily in very small quantities, rarely as much as four gallons.

11. Dealer means a person, partnership, or corporation that operates a retail establishment or store and is regularly engaged during customary business hours in the sale of merchandise, including paint products, to occasional and/or regular consumers.

12. Line Yard Lumber Co. or Chain Lumber Yard means a person, partnership or corporation that operates a number of retail establishments or stores, the individual establishments or stores (hereinafter referred to as "unit stores") (1) being customarily located in different communities, towns, or cities, some of said communities, towns, and cities, oftentimes being in different States from others of said communities, towns, and cities, and (2) being regularly engaged in the sale of lumber and other merchandise, including paint products, to occasional and/or regular consumers.

13. Jobber or Distributor means a person, partnership, or corporation engaged in the business of buying and receiving paint products from the manufacturers or sellers thereof and of selling and shipping paint products to and in servicing, billing and carrying dealer customers.

14. Specification Paint means paint manufactured according to a special formula prepared to meet the special requirements or demands of a large consumer, customarily a governmental body, a railroad, or a large industrial concern.

15. Trade Sale Line or Trade Sale Item means standard products of the manufacturers or of other sellers, sold under trade-mark bearing the name of the manufacturer or seller, including, among other products, exterior and interior house paint, roof, barn, and metal paint, varnishes and lacquers.

16. Companion Line means standard products of the manufacturers of or other sellers which are less expensive than the trade sale line products and not always sold under trade-mark bearing the name of the manufacturer or seller.

17. Allied Line means miscellaneous products such as dry colors, bronzes, linseed oil, turpentine, alcohol, lead, and insecticide materials.

18. Paint Products means trade sale line, companion line (in the case of those companies that manufacture such a line) and allied line only.

PAR. 5. The Sherwin-Williams Co. (herein sometimes referred to as the "parent company") owns 100 percent of the issued and outstanding equity stock of the following corporations (herein sometimes referred to as "first degree subsidiaries"):

The Lowe Brothers Co.; John Lucas & Co., Inc.; Acme White Lead and Color Works, of Hamtramck, Mich.; Detroit White Lead Works, of Hamtramck, Mich.; Martin Senour Co., of Chicago, Ill.; and The Sherwin-Williams Co. of California, each of which is engaged in the manufacture, sale, and distribution in commerce of trade sale and allied line paint products.

John Lucas & Co., Inc., owns 100 percent of the issued and outstanding equity stock of the following corporation (herein sometimes referred to as a "second degree subsidiary"):

W. W. Lawrence & Co., of Pittsburgh, Pa., which is engaged in the manufacture, sale and distribution in commerce of trade sale and allied line paint products.

Acme White Lead and Color Works owns 100 percent of the issued and outstanding equity stock and controls the policies and activities of the following corporations (herein sometimes referred to as "second degree subsidiaries"):

The Peninsular Paint and Varnish Co., of Hamtramck, Mich.; and The Lincoln Paint and Color Co., of Lincoln, Nebr., each of which is engaged in the manufacture, sale and distribution in commerce of trade sale and allied line paint products.

Each of the aforesaid first and second degree subsidiary corporations, with the exceptions of Peninsular Paint and Varnish Co. and Lincoln Paint and Color Co., which are operated as departments or divisions of Acme White Lead and Color Works, manufactures and operates generally as a separate and distinct operating company with a management and personnel, which is not the same as the management and personnel, either of the parent company or of any of the other subsidiaries. Each of said subsidiaries, however, has certain officers and directors who are also either officers or directors, or both, either of the parent company or of one or more of the other subsidiaries or of both the parent company and of one or more of the other subsidiaries.

PAR. 6. For many years prior to and since June 19, 1936, Sherwin-Williams has been and now is engaged in the business of manufac-

Findings

36 F. T. C.

turing, selling, and distributing (1) basic raw materials used in the production of paint, varnishes, and lacquers, (2) specification paint, and (3) paint products. In the course and conduct of its business Sherwin-Williams has been and now is manufacturing said paint products principally at its factories which are located in Cleveland, Ohio; Chicago, Ill.; Newark, N. J.; and Oakland, Calif. Sherwin-Williams maintains and operates approximately forty warehouses situated in as many cities in over 25 States of the United States. Sherwin-Williams, for convenience in selling and delivering its merchandise, maintains and operates district offices or sales division offices in over one-half of the cities in which its warehouses are located, and, in addition, maintains and operates a sales office in Washington, D. C., where it has no warehouse. Sherwin-Williams employs several hundred salesmen who call regularly on all classes of customers. The annual net sales of Sherwin-Williams in the United States of trade sale line paint products alone total in excess of \$16,000,000. Such products are sold and distributed through (1) over 6,300 authorized dealers, a number of whom act as distributors with respect to a portion of such paint products purchased by them, (2) over 80 chain lumber yards, (3) approximately 120 wholly owned retail stores, and (4) other miscellaneous mediums.

PAR. 7. For many years prior to and since June 19, 1936, Lowe Brothers has been and now is engaged in the business of manufacturing, selling and distributing specification paint and paint products. In the course and conduct of its business, Lowe Brothers has been and now is manufacturing paint products at its factory which is located at Dayton, Ohio; Lowe Brothers maintains and operates 17 warehouses located in the following cities: Dayton, Ohio; Chicago, Ill.; Kansas City, Mo.; Atlanta, Ga.; Boston, Mass.; Jersey City, N. J.; Cleveland and Cincinnati, Ohio; Omaha, Nebr.; Minneapolis, Minn.; Indianapolis, Ind.; Memphis, Tenn.; Jacksonville, Fla.; Fort Worth, San Antonio and Houston, Tex.; and New Orleans, La. Lowe Brothers, for convenience in selling and delivering its merchandise, maintains and operates district offices in the first six of the herein named cities in which its warehouses are located. Lowe Brothers employs a substantial number of salesmen, who call regularly on all classes of customers. The annual net sales of Lowe Brothers in the United States of trade sale line paint products alone total over \$4,000,000. Such products are sold and distributed through (1) over 1,500 authorized dealers, (2) approximately 70 distributors, and (3) approximately 100 chain lumber yards, (4) 11 wholly owned retail stores, and (5) other miscellaneous mediums.

PAR. 8. For many years prior to and since June 19, 1936, Lucas has been and now is engaged in the business of manufacturing, selling and distributing specification paint and paint products. In the course and conduct of its business, Lucas has been and now is manufacturing said paint products at its principal manufacturing plant which is located in Gibbsboro, New Jersey. Lucas maintains and operates seven warehouses located in Philadelphia, Pa.; Boston, Mass.; New York City; Chicago, Ill.; Albany, N. Y.; Pittsburgh, Pa.; and Richmond, Va. Lucas, for convenience in selling and delivering its merchandise, maintains and operates sales offices in the first four of the herein named cities in which its warehouses are located. Lucas employs a substantial number of salesmen who call regularly on all classes of customers. The annual net sales of Lucas in the United States of trade sale line paint products alone total approximately \$2,000,000. Such products are sold and distributed through (1) approximately 1,500 authorized dealers, (2) approximately 100 distributors, (3) 3 chain lumber yards, (4) 10 wholly owned retail stores, and (5) other miscellaneous mediums.

PAR. 9. Each trade sale line paint product manufactured by Sherwin-Williams conforms as nearly as possible to the standard which has been determined upon by Sherwin-Williams for that particular product. As to any particular trade sale line paint product of Sherwin-Williams, the entire output of such product is manufactured according to the same formulae, the processes of manufacture and the finished products are substantially identical and the entire output thereof is of like grade and quality. Sherwin-Williams manufactures numerous paint products of different formulae for different consumption, such as, for example, exterior house paint, interior house paint, enamels, varnishes, etc., each of which is a different product and a different composition.

Each trade sale line paint product manufactured by Lowe Brothers conforms as nearly as possible to the standard which has been determined upon for that particular product. As to any particular trade sale line paint product of Lowe Brothers, the entire output of such product is manufactured according to the same formulae, the processes of manufacture and the finished products are substantially identical and the entire output thereof is of like grade and quality. Lowe Brothers manufactures numerous paint products of different formulae for different consumption, such as, for example, exterior house paint, interior house paint, enamels, varnishes, etc., each of which is a different product and a different composition.

Each trade sale line paint product manufactured by Lucas conforms as nearly as possible to the standard which has been determined

upon for that particular product. As to any particular trade sale line paint product of Lucas, the entire output of such product is manufactured according to the same formulae, the processes of manufacture and the finished products are substantially identical and the entire output thereof is of like grade and quality. Lucas manufactures numerous paint products of different formulae for different consumption, such as, for example, exterior house paint, interior house paint, enamels, varnishes, etc., each of which is a different product and a different composition.

Each of the manufacturers manufactures and sells trade sale line paint products designed for like or similar purposes. The trade sale line products of each of the manufacturers are competitive with the comparable trade sale line products of each of the other manufacturers and a dealer selling the trade sale line products of one of the manufacturers in a given trading area often is in competition with a dealer selling the trade sale line products of another of said manufacturers.

PAR. 10. In the course and conduct of their respective businesses as aforesaid, the manufacturers transport or cause to be transported some of their paint products, when manufactured, from their respective factories aforesaid to their respective warehouses which are located as hereinbefore set forth, in various States of the United States, and oftentimes in States other than the States in which their respective factories are located and in which such shipments originated, and transport or cause to be transported their paint products from their respective factories aforesaid or from their respective warehouses aforesaid to the purchasers thereof located in the several States of the United States and in the District of Columbia, other than the States in which their respective factories are located, and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said paint products between the respective factories, warehouses and distributing points of said manufacturers and purchasers from each of them located in many and, as to Sherwin-Williams, in all of the States of the United States and the District of Columbia.

Sherwin-Williams advertises its paint products nationally; Lowe Brothers and Lucas advertise their products in a more limited manner. As a result of said advertising, Sherwin-Williams has created a public demand for its products throughout all of the States of the United States and in the District of Columbia, and each of the other manufacturers has created a public demand for its products in several of the States of the United States and, in some instances, in the District of Columbia.

The manufacturers sell and distribute their respective paint products for use, consumption, or resale within the United States and in the District of Columbia, in the same States and places as and in competition with various other sellers of paint products. Many of said competing sellers distribute their products nationally or in a number of the States of the United States, as do the manufacturers, while many of said competing sellers distribute their paint products to customers located almost exclusively within the trading area or areas embraced within or adjacent to the trading areas in which their factories are located.

The Sherwin-Williams customers who sell at retail are occasionally competitively engaged with each other locally, are oftentimes competitively engaged locally with the customers of Lowe Brothers and/or of Lucas and/or one or more of the other subsidiaries of The Sherwin-Williams Co., who sell at retail and are almost uniformly competitively engaged locally with the retailer customers of the competitors of The Sherwin-Williams Co., in the resale of said products, said resales taking place in every State of the United States and in the District of Columbia. A similar situation exists as to the retailer customers of Lowe Brothers and as to the retailer customers of Lucas.

PAR. 11. Sherwin-Williams, for the purpose of selling and distributing its paint products, has divided the territorial United States into six zones. For each zone, Sherwin-Williams has published the prices that have been applicable from time to time, on sales of its paint products to dealers in that zone (hereinafter referred to as "dealers list prices" and whenever this term is used with respect to Sherwin-Williams, it shall be understood to refer to that one of the six different dealers' list prices issued by Sherwin-Williams that shall be in effect at the time and that shall be applicable to the particular situation or situations under consideration), the differentials in prices between the zones being sufficient, as a rule to compensate Sherwin-Williams for the differences in the average cost of freight between its factories and its warehouses in the various zones. Sherwin-Williams, as a rule, ships its paint products to its customers f. o. b. the warehouse nearest the customer. In all cases where the customer buys a carload or truckload of 20,000 pounds or more and receives shipment direct from the factory, freight is allowed.

The dealers' list prices herein mentioned, so far as applicable to trade sale items, since June 19, 1936, have been subject to various discounts, depending either upon the total volume of Sherwin-Williams paint products, or certain of them, purchased by one customer during a specified period or upon the single order quantities purchased by, and shipped to, one customer. Under the "per order" discount plans, a

Findings

36 F. T. C.

customer was not deprived of whatever discount he was entitled to receive upon his single order purchase, although Sherwin-Williams, because of circumstances beyond the control of the customer, had to fill his single order by two or more shipments.

On or about January 3, 1938, Sherwin-Williams, and shortly thereafter, Lowe Brothers and Lucas commenced to operate under a discount plan (hereinafter referred to as the "1938 Plan") which was operative from that date until on or about September 1, 1939. The 1938 Plan, briefly described, was as follows:

To any customer who purchased in one order for shipment at one time less than 24 gallons¹ of trade sale line paint products, no discount was granted from the dealers list prices (except a 2 percent discount for cash within 10 days from date of invoice); to any customer who purchased such paint products in one order for shipment at one time to an aggregate of 24 gallons or more, the following scale of discounts applied:

24 to 48 gallons—6 percent off dealers list on entire order of such items.

48 to 84 gallons—8 percent off dealers list on entire order of such items.

84 gallons and over—10 percent off dealers list on entire order of such items.

Carloads and truckloads (from factory)—14 percent off dealers list on entire order of such items.

The aforementioned discount was shown on the face of the customer's invoice and the customer was billed for the net price, after the deduction of the per order discount.

On or about September 1, 1939, Sherwin-Williams, and shortly thereafter, Lowe Brothers and Lucas, ceased to operate under the 1938 Plan herein described and commenced to operate under a discount plan (hereinafter referred to as the "1939 Plan"), pursuant to which discounts from dealers list prices are dependent upon the annual volume of trade sale items purchased by a customer, with one exception hereinafter noted. Under the 1939 Plan, as applied by Sherwin-Williams, a customer purchasing less than \$500 worth of such products during a year receives a 5 percent discount from dealers list prices. A customer purchasing more than \$500 worth of such products during one year receives an additional 5 percent discount. Such a customer pays 95 percent of dealers list prices, less 5 percent of such prices as so reduced. Such discounts are given on the face of the customer's

¹ Products packaged and priced by the pound were calculated at the rate of 1 gallon to every 12 pounds.

invoice. Whether a particular customer is entitled to receive the 5 percent or the 5-5 percent discount is determined by ascertaining his purchases of trade sale items in prior years. Unless it appears that the customer's purchases of such products will be far in excess of \$500 a year, Sherwin-Williams requires an executed contract by the customer that he will purchase from Sherwin-Williams trade sale line products in the amount of \$500 or more during the course of the year. A customer purchasing in carloads or truckloads and receiving shipment direct from the factory receives a further 5 percent discount. As to such a customer, the present base price of 95 percent of dealers list prices is reduced by 5 percent thereof and by a further 5 percent of the net figure thus obtained, to arrive at the net price which the carload or truckload customer pays.

Under the 1938 Plan and during all the time it was in effect, it was the general policy and practice of Sherwin-Williams to sell its trade sale line paint products to its dealers and Sherwin-Williams sold such products to such dealers, generally at its dealers list prices, less whatever discounts may have been applicable under the 1938 Plan. It is, and, since September 1, 1939, has been, the general policy and practice of Sherwin-Williams to sell its trade sale line paint products to its dealers and Sherwin-Williams has, since September 1, 1939, been selling and is now selling such products to such dealers, generally at its dealers list prices, less whatever discounts are applicable under the 1939 Plan.

PAR. 12. The Lowe Brothers methods of selling and distributing its paint products, so far as concerns the establishment of zones, the publishing of its own dealers list prices for each zone, the collection of freight charges and the applicability of the 1938 and 1939 Plans to such dealers list prices, have been and are substantially the same as those of Sherwin-Williams, with the following exceptions:

1. Lowe Brothers, in shipping its paint products to its customers f. o. b. its warehouse nearest the customer, makes it a practice to equalize the freight charges with the freight charges applicable from that warehouse of a seller (or of another of said manufacturers or of one of the other subsidiaries of The Sherwin-Williams Co.) which is nearest to the customer.

2. Under variations of the 1939 Plan applicable to Lowe Brothers, (a) a customer purchasing more than \$500 worth of trade sale line paint products during a year receives a 10 percent discount from dealers list prices instead of a 5-5 percent discount.

- (b) A customer purchasing in carloads or truckloads and receiving shipment direct from the factory receives a 15 percent discount instead of a 5-5-5 percent discount.

(c) Whether a particular customer is entitled to receive the 10 percent discount is determined by averaging his purchases of trade sale items over a 3-year period, but as soon as that average falls below \$500, the classification of such customer is changed to eliminate the discount to which a customer purchasing over \$500 is entitled.

Under the 1938 Plan and during all the time it was in effect, it was the general policy and practice of Lowe Brothers to sell its trade sale line paint products to its dealers and Lowe Brothers sold such products to such dealers, generally at its dealers list prices, less whatever discounts may have been applicable under the 1938 Plan. It is, and, since on or about September 15, 1939, has been, the general policy and practice of Lowe Brothers to sell its trade sale line paint products to its dealers and Lowe Brothers, since on or about September 15, 1939, has been selling and is now selling such products to such dealers, generally at its dealers list prices, less whatever discounts are applicable under the 1939 Plan.

PAR. 13. The Lucas methods of selling and distributing its paint products, so far as concerns the establishment of zones, the publishing of its own dealers list prices for each zone, the collection of freight charges and the applicability of the 1938 and 1939 Plans to such dealers list prices, have been and are substantially the same as those of Sherwin-Williams, with the following exceptions:

1. The territorial United States has been divided into four instead of six zones.

2. Lucas allows freight to destination. The paint products are shipped f. o. b. the warehouse, but the customer is permitted to deduct freight from the net amount of the invoice.

3. Under a variation of the 1938 Plan applicable to Lucas, customers purchasing in carloads and truckloads of 20,000 pounds or more direct from the factory were allowed a 12 percent rather than a 14 percent discount from dealers list prices.

4. Under variations of the 1939 Plan applicable to Lucas, (a) the discounts allowed by Lucas are based upon three different groupings of products, as follows: On group 1, discounts are 10-10 percent to customers purchasing less than \$500 worth of such products during 1 year, and 10-10-5 percent to customers purchasing more than \$500 worth of such products during 1 year, and 10-5-5 percent on carload and truckload shipments of such products direct from the factory to the purchaser. On group 2 products, the discounts are 5 percent to customers purchasing less than \$500 worth of such products during one year and 5-5 percent to customers purchasing more than \$500 worth of such products during 1 year with an additional 5 percent on

direct carload and truckload shipments of such products. On group 3 products, there are no discounts whatsoever.

(b) Discounts are granted upon the basis of the total purchases of trade sale items by a customer during the preceding year.

Under the 1938 Plan and during all the time it was in effect, it was the general policy and practice of Lucas to sell its trade sale line paint products to its dealers and Lucas sold such products to such dealers, generally at its dealers list prices, less whatever discounts may have been applicable under the 1938 Plan. It is, and, since on or about September 5, 1939, has been, the general policy and practice of Lucas to sell its trade sale line paint products to its dealers, and Lucas, since on or about September 5, 1939, has been selling, and is now selling, such products to such dealers, generally at its dealers list prices, less whatever discounts are applicable under the 1939 Plan.

PAR. 14. The manufacturers sell their trade sale line paint products to a number of chain or line yard lumber companies. A chain lumberyard customer may operate from two- to over seventy-unit stores.

For the purpose of granting and allowing the quantity discounts under their respective 1938 Plans, each of the manufacturers customarily treated an order from a unit store of one of its chain lumberyard customers in the same way that it treated an order from an independent dealer. If the order was for less than 24 gallons of trade sale items, dealers list prices were charged; if for more, the discount applicable to the number of gallons ordered was granted and allowed. However, for the purpose of granting and allowing such discounts, each of the manufacturers treated all orders received at one time from the main office of a chain lumberyard as a single order, although such combined order may have called for shipments to a number of the unit stores of the chain. This privilege granted chain lumberyard customers was known as "pooling." The mechanics of ordering, invoicing, shipping and billing in a typical case of this sort may be described as follows:

Each of the unit stores of the chain that needed a supply of paint products would designate on the regular order forms of the particular manufacturer from which that chain was purchasing the amount, number, sizes, colors, etc., of the paint products desired by it, together with the name and address of the unit store. These filled in order forms were sent by the unit stores to the main office of the chain which in turn would forward a number of them at one time to the manufacturer. The manufacturer would give, to all these orders which were received at one time from one chain lumberyard customer, a single order number. This order number would then be placed by the manufacturer upon each of the order forms that had been executed by the

Findings

36 F. T. C.

various unit stores. The manufacturer would place after this order number the letters A, B, C, D, E, etc., to designate the different unit stores to which shipments were to be made.

Separate invoices were made out by the manufacturer to cover the paint products listed on each one of the order forms which had been executed by the various unit stores. Any particular invoice might cover only a very few gallons of trade sale line paint products, but the quantity discount granted, allowed, and shown on the face of each of such invoices was that applicable to the combined gallonage of such products covered by all of the orders received from the chain lumberyard customer at one time. For example, if the pooled order totaled over 84 gallons of trade sale items, the invoice covering the 10-gallon order of but one unit store would grant, allow and show on the face of such invoice a 10 percent discount off the manufacturer's dealers list prices.

The paint products ordered by the various unit stores through their main office were then shipped by the manufacturer to such unit stores at the various addresses which appeared on the order forms filled out by such stores. All the invoice sheets which covered all the orders of all the unit stores which had been forwarded to the manufacturer at one time by the main office of the chain lumberyard were then sent to the main office of the chain for payment. Thus, the main office of each chain received detailed information and detailed billing, regarding the separate orders of its unit stores which together made up the pooled order and regarding the individual shipments made pursuant thereto.

The pooling privilege herein described was extended by each of the manufacturers, not only to all of its chain lumberyard customers, but also to every one of its customers which owned, controlled, or operated two or more stores.

Sherwin-Williams, under the 1938 Plan, granted and allowed to some of its chain lumberyard customers a flat 10 percent discount off dealers list prices on all their purchases of trade sale items, irrespective of the size of the order. In such cases, a separate order for a few gallons of such products from a unit store of one of such chains sent directly to Sherwin-Williams was accorded the 10 percent discount.

The salesmen of the manufacturers in general devoted approximately the same amount of time in calling on, servicing and rendering sales assistance to a unit store of a chain lumberyard customer as was spent on an independent dealer in the same territory whose per order and annual purchases were approximately the same as those of the unit store.

Chain lumberyard and other customers of the manufacturers, by taking advantage of the pooling privilege, or by being given and accepting the 10 percent flat discount, received better prices for their unit stores than were received by independent dealers who were in competition with such unit stores, and whose "per order" purchases might have been the same or even greater than those of said unit stores; the differential might and oftentimes did amount to as much as 10 percent.

We find that The Sherwin-Williams Co., by Sherwin-Williams granting and allowing, under the 1938 Plan, a flat 10 percent discount off dealers list prices to some of the chain lumberyard customers of Sherwin-Williams, has discriminated in price against (1) other chain lumberyard customers of Sherwin-Williams; and (2) independent dealers purchasing from Sherwin-Williams.

We find that Sherwin-Williams, Lowe Brothers, and Lucas, by granting and allowing, under the 1938 Plan, to their chain lumberyard customers and to some of their other customers the 10, 8, and 6 percent discounts off dealers list prices which have resulted from the extension to them of the pooling privilege, have discriminated in price against their independent dealers and that The Sherwin-Williams Co., has likewise discriminated in price in favor of chain lumberyards and such other customers purchasing from Sherwin-Williams against independent dealers purchasing from Sherwin-Williams.

PAR. 15. For the purpose of granting and allowing the quantity discounts under its 1938 Plan, Sherwin-Williams adopted the practice of accumulating the orders of some of its distributors and dealers, either for a specified period, usually a week, or for a time sufficiently long to enable the particular distributor or dealer to earn the maximum quantity discounts for orders of less than carload quantities, and has granted and allowed to such distributors and dealers, the quantity discounts applicable to the gallonage represented by the orders so accumulated.

For example, Sherwin-Williams accumulated the orders of its dealer in Crystal Falls, Mich., until the orders received by it from him covered 84 gallons of trade sale items; the 10 percent discount from dealers list prices was then granted and allowed in invoicing and billing such dealer on his purchases of all such items. Sherwin-Williams nevertheless cutomarily shipped to said dealer as often as it received orders from him, and irrespective of the size of the order. This practice necessarily resulted in this dealer receiving a flat 10 percent off dealers list prices irrespective of the size of his individual orders.

Further illustrating the practice herein considered, Sherwin-Williams totaled the gallonage of all orders received in a period of one

week from anyone of some, but not all, of its distributors and dealers in the trading area known as "Metropolitan New York," and granted and allowed to each such favored distributor and dealer on each order the quantity discount that would have been applicable, had such gallonage been covered by one order for shipment at one time. Sherwin-Williams nevertheless customarily shipped or delivered to its thus favored distributors and dealers in Metropolitan New York as often as it received orders from them, and irrespective of the size of the individual orders. In the cases of several of such favored distributors and dealers, Sherwin-Williams frequently delivered to them as often as once a day. This practice usually resulted in the favored distributors and dealers receiving 10 percent off dealers list prices, irrespective of the size of the individual orders.

During the period that the 1938 Plan was operative neither Lowe Brothers nor Lucas accumulated the orders of their distributors and dealers located in Metropolitan New York or in other trading areas with respect to which Sherwin-Williams adopted this practice.

We find that Sherwin-Williams by granting and allowing to some of its dealers and distributors, under the 1938 Plan, the 10, 8, and 6 percent discounts off dealers list prices which have resulted from the extension to them of the accumulation privilege, has discriminated in price against other dealers and distributors of Sherwin-Williams and that The Sherwin-Williams Co. has likewise discriminated in price in favor of those Sherwin-Williams dealers and distributors to whom the accumulation privilege has been extended and against other dealers and distributors of Sherwin-Williams.

PAR. 16. Lowe Brothers, from on or before January 15, 1938, until on or about May 6, 1940, maintained a warehouse in the building at 2063 E. Fifty-fifth Street, Cleveland, Ohio, owned by The Cleveland Builders Supply Co. (hereinafter referred to as "Cleveland Builders"), a corporation organized and existing under the laws of the State of Ohio. Cleveland Builders, during the period aforementioned, has been and is now engaged in Cleveland and environs in the sale and distribution of paint products, and has been and is itself a dealer in Lowe Brothers products.

Approximately three-fourths of the paint products which have been stored by Lowe Brothers in said warehouse have been ultimately shipped by Cleveland Builders, pursuant to the instructions of Lowe Brothers, to customers of Lowe Brothers, other than Cleveland Builders. The remaining paint products stored by Lowe Brothers in said warehouse have been withdrawn from time to time by Cleveland Builders and delivered by Cleveland Builders to its own customers to whom it has sold such products.

On or before the 10th day of each month during the period that its 1938 Plan was in effect, Lowe Brothers paid to Cleveland Builders, in lieu of a fixed monthly rental for the aforesaid warehouse and for services performed by Cleveland Builders, or its employees, in connection therewith, a commission equal to 10 percent of the total net amount of Lowe Brothers paint products shipped out of said warehouse to Lowe Brothers' customers by Cleveland Builders during the immediately preceding month. Payment was made by credit memorandum. Cleveland Builders used this credit memorandum as an offset against the sums due Lowe Brothers for paint products purchased by Cleveland Builders and withdrawn by it from the warehouse for its own account during the immediately preceding month.

Lowe Brothers guaranteed that Cleveland Builders' annual commissions would total not less than \$1,800 a year. No commissions were paid by Lowe Brothers on Cleveland Builders' own purchases of stock from the warehouse. The cost to Lowe Brothers of procuring warehousing services and facilities comparable to those furnished by Cleveland Builders does not normally exceed 7 percent of the net amount billed by it on all the paint products so warehoused. The 10 percent commission paid by Lowe Brothers to Cleveland Builders was at least an adequate payment to Cleveland Builders for the warehousing of all the paint products which were, from time to time during the aforementioned period, stored in said warehouse, including those purchased by Cleveland Builders for its own account, and for services rendered by Cleveland Builders, or its employees, in connection therewith.

Whenever Cleveland Builders receive an order from any of its own customers for any of the Lowe Brothers paint products, it withdrew from the Lowe Brothers warehouse sufficient paint products to fill said orders. Tickets were made out to cover each such withdrawal. These tickets showed the value at dealers' list prices of the paint products so withdrawn. Only rarely did an individual ticket cover 84 or more gallons of Lowe Brothers trade sale items; oftentimes, a single ticket did not cover 24 gallons of such products. Cleveland Builders made almost daily withdrawals from the warehouse; occasionally, more than one withdrawal was made during one day.

Early in each month, Lowe Brothers billed Cleveland Builders for all the paint products withdrawn from the warehouse by Cleveland Builders during the preceding month.

During the period that its 1938 Plan was in effect, Lowe Brothers granted and allowed to Cleveland Builders a flat discount of 12 percent from dealers list prices on all its purchases of trade sale items. This discount was arrived at by estimating that, if Lowe Brothers had not had a warehouse in one of Cleveland Builders' buildings, a purchaser

of the quantities customarily purchased by Cleveland Builders would ordinarily purchase 50 percent in carload quantities and the remaining 50 percent in 84 gallons or greater l. c. l. quantities. During said period, Cleveland Builders purchased annually from Lowe Brothers at dealers list prices between \$10,000 and \$11,000 worth of paint products.

A dealer's paint inventory will normally average between 25 and 50 percent of his annual purchases. In other words, a dealer does not normally turn over his paint stock more frequently than four times a year.

Cleveland Builders, during the period the 1938 Plan was in effect, was in competition in Cleveland and environs with the customers of Sherwin-Williams, with the customers of Lucas and other subsidiaries of The Sherwin-Williams Co., and with the customers of the competitors of The Sherwin-Williams Co. in the sale and distribution of paint products.

We find that Lowe Brothers, by granting and allowing, under the 1938 Plan, to a dealer-customer from which it had rented warehouse space, a flat 12 percent discount from dealers list prices on all the purchases, however small, of such customer, has discriminated in price against other Lowe Brothers dealers.

PAR. 17. In addition to the per order quantity discounts applicable under their respective 1938 Plans and generally available to all purchasers from them and the volume discounts and carload or truckload quantity discount applicable under their respective 1939 Plans and generally available to all purchasers from them, the manufacturers have regularly and customarily granted and allowed and are now granting and allowing functional discounts to customers who have qualified as jobbers, wholesalers or distributors. It was, at the time of the issuance of the complaint herein, the established policy and practice of the manufacturers to grant and allow functional discounts only to jobbers or distributors and to such dealers that perform the functions of the jobber or distributor, and only in the latter cases, to the extent that such dealers perform such functions. It was not, at the time of the issuance of the complaint herein, the policy or general practice of the manufacturers to grant or allow functional discounts on paint products which were resold by distributors or dealers (1) directly to regular or occasional consumers or (2) indirectly through retail branches, owned or controlled by the distributors or dealers, to regular or occasional consumers.

Sherwin-Williams does not have any customers who operate exclusively as distributors, but does grant functional discounts to some of its dealers who perform the functions of a distributor; that such discounts,

depending upon the services performed by the distributor, vary from 5 percent to 12½ percent, although they customarily amount to 7½ or 10 percent. Sherwin-Williams, as a rule, requires its dealers acting as distributors to submit statements after the end of each month showing the total sales at dealers list prices made to other dealers during the preceding month. From such total sales, Sherwin-Williams deducts the discounts that have been received by the reporting dealer with respect to the purchases which have been so resold. The applicable percentage functional discount is then applied to the net amount thus obtained to ascertain the sum due the reporting dealer as a functional discount for that month. Sherwin-Williams then issues a credit memorandum to the reporting dealer covering the functional discount so allowed for such month.

Lowe Brothers, during the period its 1938 Plan was in effect, allowed a maximum functional discount of 15 percent to its distributors. In the case of dealers performing all of the functions of a distributor, the functional discount, as a rule, bore the same ratio to 15 as the percentage of the dealer's distributor business bore to his entire business. The functional discount, as a rule, was granted and allowed on the face of the invoice and was based upon the gross dollar value of the dealer's purchases at dealers list prices and prior to the deduction of the per order quantity discounts. Since its 1939 Plan has been in effect, Lowe Brothers has allowed a maximum functional discount of 17 percent to its distributors. The functional discount is now based upon the net amount of the dealer's purchases at dealers list prices, after the deduction of the volume or quantity discount.

Lucas, under the 1938 Plan, allowed and now allows, under the 1939 Plan, a maximum functional discount of 15 percent to its distributors. In the case of dealers performing all of the functions of a distributor, the functional discount, as a rule, formerly bore and now bears the same ratio to 15 as the percentage of the dealer's distributor business bore or bears to his entire business. The functional discount, as a rule, was and is granted or allowed on the face of the invoice and was and is based upon the net amount of the dealer's purchases at dealers list prices, after the deduction of the quantity or volume discounts.

PAR. 18. During the time that both the 1938 and 1939 Plans have been in effect, Lowe Brothers, as a rule, has accepted and now accepts the statements of its dealers as to the percentage that their distributor business bears to their entire business. As a result of this method of computing and paying functional discounts, however, a substantial number of Lowe Brothers dealer-distributors have been receiving functional discounts with respect to a substantial portion of the trade

sale items resold by them to regular and occasional consumers, either (1) directly or (2) indirectly, through retail branches owned by them.

All of the Lowe Brothers dealer-distributors who receive functional discounts on trade sale item purchases which are resold to regular and occasional consumers, either (1) directly, or (2) indirectly, through retail branches owned by them, are occasionally in competition with other Lowe Brothers dealers, are frequently in competition with the dealers of another of said manufacturers or of other subsidiaries of The Sherwin-Williams Co., are almost invariably in competition with the dealers of other sellers, and are not infrequently in competition with the dealer-distributors, either of Lowe Brothers, or of another of said manufacturers, or of other subsidiaries of The Sherwin-Williams Co., or of other sellers.

PAR. 19. When Lucas adopted its 1938 Plan, all dealer-distributors were requested to submit invoices or certified statements each month showing the sales of trade sale items to other dealers during the preceding month. Some of the dealers complied; others said they would not do so. As a result, the company adopted two forms of distributor agreements, the first (yellow) being signed by all distributors who were willing to submit invoices or certified statements each month, the second (white) being signed by those who would do no more than certify the percentage of their business transacted with retail dealers. Practically all Lucas distributors signed only the white contract, and, during the time that the 1938 and 1939 Plans were in effect, received functional discounts from Lucas on the basis of the representations contained therein. As a result of this method of computing and paying functional discounts, a substantial number of Lucas dealer-distributors, have been receiving functional discounts with respect to a substantial portion of the trade sale items resold by them to regular and occasional consumers, either (1) directly, or (2) indirectly, through retail branches owned by them.

All of the Lucas dealer-distributors who receive functional discounts on trade sale item purchasers which are resold to regular and occasional consumers, either (1) directly, or (2) indirectly, through retail branches owned by them are occasionally in competition with the other Lucas dealers, are frequently in competition with the dealers of another of said manufacturers, or of other subsidiaries of The Sherwin-Williams Co., are almost invariably in competition with the dealers of other sellers and are not infrequently in competition with the dealer-distributors, either of Lucas, or of another of said manufacturers or of other subsidiaries of The Sherwin-Williams Co., or of other sellers.

PAR. 20. The respondents The Lowe Brothers Co. and The John Lucas & Co., Inc. have granted and allowed and are now granting and allowing, in addition to quantity or volume discounts, additional discounts denominated functional to some of their dealers, and not to others on consumer business in certain localities. Illustrative of this practice are the following examples:

Lowe Brothers, under the 1938 Plan, granted and allowed to Cleveland Builders, in addition to the flat 12 percent discount described in paragraph 15 of the stipulation of December 6, 1940, a discount of 15 percent on 50 percent of its purchases of trade sale line paint products from Lowe Brothers or $7\frac{1}{2}$ percent on 100 percent of its purchases. Under the 1939 Plan, and until on or about May 6, 1940, Lowe Brothers granted and allowed to Cleveland Builders, in addition to the volume discounts under said 1939 Plan, a discount of $10\frac{1}{2}$ percent on 100 percent of its purchases of Lowe Brothers trade sale line paint products. Two and one-half percent of this additional discount was arrived at by estimating that, if Lowe Brothers had not had a warehouse in one of Cleveland Builders buildings, a purchaser of the quantities customarily purchased by Cleveland Builders would ordinarily purchase 50 percent in carload quantities. It was an "in lieu of carload quantity" discount. Under the 1939 Plan, and subsequent to on or about May 6, 1940, Lowe Brothers has granted and allowed to Cleveland Builders, in addition to the volume and quantity discounts under said 1939 Plan, a discount of 8 percent on 100 percent of its purchases of Lowe Brothers trade sale line paint products. Cleveland Builders does not sell any portion of the paint products which it purchases from Lowe Brothers to other dealers, but sells substantially all thereof to regular and occasional consumers of paint, approximately 90 percent thereof being sold to painters, paint contractors and maintenance accounts. Lowe Brothers has one other dealer customer located in Metropolitan Cleveland. Cleveland Builders, during all the time that the 1939 Plan has been in effect, has been in competition in Cleveland and environs with the customers of the competitors of Lowe Brothers in the sale and distribution of paint products.

Lowe Brothers, under its 1938 Plan, granted and allowed another one of its customers, in addition to the per order quantity discounts under said 1938 Plan, a 5 percent discount on the basis that $33\frac{1}{4}$ percent of the business of that customer was jobber business, and under its 1939 Plan, now grants and allows to such customer, in addition to the volume and quantity discounts under said 1939 Plan, a discount of $6\frac{1}{2}$ percent on the basis that 38 percent of the business of this customer is jobber business. Such customer's net purchases during

Findings

36 F. T. C.

each of the calendar years, 1938, 1939, and 1940, approximated \$15,000. Actually, such customer sold only approximately 13 percent of its purchases of Lowe Brothers trade sale line paint products during each of said calendar years to other dealers. This customer has been, during all the times herein mentioned and is now in competition with the customers of the competitors of Lowe Brothers in the sale and distribution of paint products.

Lowe Brothers, under the 1938 Plan, granted and allowed another one of its dealer-distributor's customers, in addition to the per order quantity discounts under said 1938 Plan, a 12 percent discount on the basis that 80 percent of the business of that customer was jobber business and, on the same basis under the 1939 Plan, now grants and allows to such customer, in addition to the volume and quantity discounts under said 1939 Plan, a discount of 13½ percent on all of the purchases of such customer. Such customer's net purchases during each of the calendar years 1938, 1939, and 1940, exceeded \$35,000. Actually, such customer sold approximately 50 percent of its purchases of Lowe Brothers trade sale line paint products at retail through retail stores wholly owned and operated by it. All the records for both the wholesale and retail departments were kept by the same employees. Approximately one-half of the purchases of the Lowe Brothers paint products sold at retail by such customer were sold by the retail store located in the same building as such customer's wholesale department, and approximately one-half thereof were sold by two wholly owned and operated retail stores located in the same city in which such dealer-distributor customer is located. Practically 100 percent of the Lowe Brothers paint products sold at retail by such customer were sold to the occasional consumer. In no one of the three aforementioned years did the percentage of such customer's purchases of Lowe Brothers trade sale line paint products which it resold to other dealers exceed 55 percent of its total purchases of such products. Some of the Lowe Brothers dealers to whom this Lowe Brothers dealer-distributor sells are located in the same city as the dealer-distributor, the remainder being located in the same and adjoining counties. In selling Lowe Brothers products to these independent dealers, this Lowe Brothers dealer-distributor has charged the prices and granted the discounts which have been applicable from time to time under the Lowe Brothers 1938 and 1939 Plans. This dealer-distributor customer has been, during all the times herein mentioned, and is now in competition with the customers of the competitors of Lowe Brothers in the sale and distribution of paint products.

Lucas, under the 1938 Plan, granted and allowed, and, under the 1939 Plan, now grants and allows to one of its dealers, in addition to the quantity or volume discounts applicable thereunder, a discount of 15 percent¹ on 100 percent of that customer's trade sale line purchases. This customer's purchases of Lucas paint products amount to approximately \$4,000 per year at dealers' list prices. Such customer sells all of the paint products it purchases from Lucas to regular and occasional consumers of paint and does not sell any portion thereof to other dealers.

Lucas, under the 1938 Plan, granted and allowed to one of its dealer customers, in addition to the per order quantity discounts under said 1938 Plan, a discount of 15 percent on 60 percent of the trade sale line purchases of such customer or 9 percent on 100 percent of such purchases. Under the 1939 Plan, Lucas now grants and allows to such customer, in addition to volume and quantity discounts under said 1939 Plan, a discount of 15 percent on 75 percent of the trade sale line purchases of such customer or 11¼ percent on 100 percent of such purchases. Lucas, in 1938, sold to such customer trade sale line items having a value at net prices of approximately \$4,000, in 1939 of approximately \$4,500, and in 1940 of over \$11,000. In addition to operating a store for the sale at retail of paint products, this customer is himself a painting contractor. More than \$1,500 worth (at net prices) of the trade sale items purchased by this customer from Lucas in 1938 and also in 1939 were used by him in his own painting business and more than one-half of the trade sale items purchased by him from Lucas in 1940 were used by him in his own painting business. The remaining paint products which he purchased from Lucas were sold by him at retail to regular and occasional consumers of paint. No portion thereof was sold to other dealers. Lucas has a number of other dealer customers located in the same city in which this customer is located. A substantial portion of the trade sale items sold in 1938, 1939, and 1940 by such customer at retail to regular and occasional consumers of paint were sold at dealers' list prices, the prices (except for the per order quantity or volume discounts) that other Lucas dealers in the same city in which such customer is located paid for said paint products.

Lucas, in 1938, sold to one of its dealer-distributor customers trade sale items having a value at dealers list prices of approximately \$40,000, or a net value after the deduction of per order quantity discounts and a 15 percent jobber discount of approximately \$30,000.

¹ The maximum discount allowed by Lucas on its "Royal Blue" line is 10 percent. To the extent that a customer's trade sale line purchases include "Royal Blue" items, the discount never exceeds this 10 percent.

Findings

36 F. T. C.

Lucas granted and allowed the 15 percent discount to such customer on the basis that 100 percent of its business was jobber business. Actually, said customer sold at retail through a separately operated retail store, located in the same city in which its wholesale business is transacted and wholly owned and operated by it, a substantial portion of the paint products purchased by it from Lucas. The value at dealers' list prices of Lucas trade sale items sold by such customer at retail amounted to approximately \$4,000. Lucas in 1939 and 1940 granted to such customer said 15 percent discount on all of its purchases of Lucas trade sale items, although such customer sold a substantial portion of its purchases in each year through said retail branch to regular and occasional consumers of paint products.

All of the customers of Lucas referred to in this paragraph have been, during the times herein mentioned, and now are in competition with the customers of the competitors of Lucas in the sale and distribution, of paint products.

PAR. 21. Many paint concerns competing with the respondents sell directly, particularly in the metropolitan centers, to painters, master painters, painting contractors, and maintenance accounts. These classes of customers customarily buy paint products at better prices than those paid by occasional consumers. Dealers and dealer-distributors desiring to procure a substantial portion of the painter-maintenance business customarily employ outside salesmen, provide delivery service, and oftentimes operate a credit department. However, at no time during the years 1938, 1939, and 1940, has either Lowe Brothers or Lucas granted and allowed to all its dealers and dealer-distributors discounts (in addition to the regular per order or volume discounts then in effect) on that portion of the purchases of such customers which were resold by them to painters, painting contractors, master painters and maintenance accounts.

PAR. 22. We find that Lowe Brothers and Lucas, by granting and allowing, under the 1938 and 1939 Plans, functional or special, discounts to some of their dealers and dealer-distributors in a particular locality on nondealer business (that is, on the purchases which are resold by such customers to painters, painting contractors, and maintenance accounts), have discriminated in price against others of their dealers and dealer-distributors in such locality.

We find that Lowe Brothers and Lucas, by granting and allowing, under the 1938 and 1939 Plans, functional or special discounts to some of their dealer-distributors on the purchases of such dealer-distributors which are resold by such dealer-distributors directly to the consumer through their retail departments or branch stores wholly owned by

25

Order

them, have discriminated in price against others of their dealer-distributors.

PAR. 23. All of the prices and discounts on said prices of the manufacturers have been made in the course of commerce.

PAR. 24. The effect of the discriminations in price, set forth in paragraphs 14 to 16, inclusive, and paragraphs 20, 21 and 22, hereof, has been and may be substantially to lessen competition with the respondent or respondents, as the case may be, in the line of commerce in which they are engaged; to injure, destroy, or prevent competition with the respondent or respondents as the case may be, and to injure, destroy, or prevent competition with the customers of said respondents who received the benefit of such discriminations.

PAR. 25. No evidence appears in the record to justify the price differentials resulting from the practices set forth in paragraphs 14 to 16, inclusive, and paragraphs 20, 21 and 22, hereof, and the Commission finds that said price differentials are not justified.

CONCLUSION

The aforesaid acts and practices of the respondent or respondents, as the case may be, as set out in paragraphs 14 to 16, inclusive, and paragraphs 20, 21 and 22, hereof, are in violation of Section 2 (a) of said Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'," approved October 15, 1914 (the Clayton Act), as amended by Act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the respondents, and two stipulations as to the facts dated December 6, 1940, and October 20, 1942, respectively, signed by counsel for the Commission and counsel for the respondents, in which it is provided that the statement of facts contained therein may be accepted as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and the taking of testimony and all intervening procedure having been waived and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of Section 2 (a) of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for

other purposes" (The Clayton Act), as amended by Act of Congress approved June 19, 1936 (The Robinson-Patman Act).

It is ordered, That the respondent, The Sherwin-Williams Co., a corporation, its successors and assigns and its officers, directors, agents, and employees, in connection with distribution and sale of trade sale line paint products in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist:

1. From continuing or resuming, under a per order discount plan providing a 6 percent discount from dealers' list prices for an order of 24 to 48 gallons, an 8 percent discount for an order of 48 to 84 gallons and a 10 percent discount for an order of 84 gallons or more or under any plan substantially similar thereto, the practice of granting and allowing to purchasers operating a number or chain of retail distribution outlets, the 10, 8, or 6 percent discounts based upon quantity per order, when the said order is split into several shipments to various of the said retail distribution outlets;

2. From continuing or resuming, under a per order discount plan providing a 6 percent discount from dealers' list prices for an order of 24 to 48 gallons, an 8 percent discount for an order of 48 to 84 gallons and a 10 percent discount for an order of 84 gallons or more or under any plan substantially similar thereto, the practice of granting and allowing to purchasers operating a number or chain of retail distribution outlets, a 10 percent or other substantially similar flat discount from said dealers' list prices, in lieu of the quantity per order discounts available thereunder.

3. From continuing or resuming, under a per order discount plan providing a 6 percent discount from dealers' list prices for an order of 24 to 48 gallons, an 8 percent discount for an order of 48 to 84 gallons and a 10 percent discount for an order of 84 gallons or more under any plan substantially similar thereto, the practice of granting and allowing to purchasers the 10, 8, or 6 percent discounts based upon quantity per order, when the so-called "order" upon which said discounts are based is not in fact a single order but represents a number of orders from a single purchaser accumulated over a definite or indefinite period of time.

It is further ordered, That the respondent, The Lowe Bros. Co., a corporation, its successors and assigns and its officers, directors, agents and employees, in connection with the distribution and sale of trade sale line paint products in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist:

1. From continuing or resuming, under a per order discount plan providing a 6 percent discount from dealers' list price for an order of 24 to 48 gallons, an 8 percent discount for an order of 48 to 84 gallons and a 10 percent discount for an order of 84 gallons or more under any plan substantially similar thereto, the practice of granting and allowing to purchasers operating a number or chain of retail distribution outlets, the 10, 8, or 6 percent discounts based upon quantity per order, when the said order is split into several shipments to various of the said retail distribution outlets.

2. From continuing or resuming, under a per order discount plan providing a 6 percent discount from dealers' list prices for an order of 24 to 48 gallons, an 8 percent discount for an order of 48 to 84 gallons, a 10 percent discount for an order of 84 gallons or more and a 14 percent discount on carload or truckload (20,000 lbs. or more) purchases for shipment direct from the factory, or under any plan substantially similar thereto, the granting and allowing to any of its dealer customers from whom it has or shall have purchased, leased, or rented warehouse space any quantity per order discounts which are greater, different or other than the quantity per order discounts available thereunder to all dealer customers purchasing in the same per order quantities.

3. From granting and allowing under a discount plan providing a 5 percent discount from dealers' list prices for annual purchases totaling less than \$500, a 10 percent discount for annual purchases in excess of \$500 and a 15 percent discount on carload or truckload (20,000 lbs. or more) purchases for shipment direct from the factory, or under any plan substantially similar thereto, to any of its dealer customers from whom it has or shall have purchased, leased or rented warehouse space, any carload discounts or any discounts in lieu of carload discounts, except with respect to the actual carload or truckload purchases of such dealers shipped direct from the factory.

4. From discriminating in price between dealer and dealer-distributor customers through the practice followed under present and prior discount plans of granting and allowing to some of its dealer-distributor customers discounts (in addition to the regular per order or volume discounts from dealers' list prices in effect at the time and granted and allowed to all of its customers) on such portion of the purchases of said favored dealer-distributor customers as is sold at retail through the wholly owned and operated retail stores of said dealer-distributor customers.

5. From discriminating in price between its customers through the practice followed under present and prior discount plans of grant-

ing and allowing to some of its customers in a particular locality special or additional discounts (in addition to the regular per order or volume discounts from dealers' list prices in effect at the time and granted and allowed to all of its customers) on purchases made by said favored customers which are not resold by them to other dealers, while not granting and allowing such special or additional discounts on such purchases to all of its customers in such locality.

It is further ordered, That the respondent, John Lucas and Co., Inc., a corporation, its successors and assigns and its officers, directors, agents, and employees, in connection with the distribution and sale of trade sale line paint products in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist:

1. From continuing or resuming, under a per order discount plan providing a 6 percent discount from dealers' list prices for an order of 24 to 48 gallons, an 8 percent discount for an order of 48 to 84 gallons and a 10 percent discount for an order of 84 gallons or more or under any plan substantially similar thereto, the practice of granting and allowing to purchasers operating a number or chain of retail distribution outlets, the 10, 8, or 6 percent discounts based upon quantity per order, when the said order is split into several shipments to various of the said retail distribution outlets,

2. From discriminating in price between dealer and dealer-distributor customers through the practice followed under present and prior discount plans of granting and allowing to some of its dealer-distributor customers discounts (in addition to the regular per order or volume discounts from dealers list prices in effect at the time and granted and allowed to all of its customers) on such portion of the purchases of said favored dealer-distributor customers as is sold at retail through the wholly owned and operated retail stores of said dealer-distributor customers.

3. From discriminating in price between its customers through the practice followed under present and prior discount plans of granting and allowing to some of its customers in a particular locality special or additional discounts (in addition to the regular per order or volume discounts from dealers list prices in effect at the time and granted and allowed to all its customers) on purchases made by said favored customers which are not resold by them to other dealers, while not granting and allowing such special or additional discounts on such purchases to all of its customers in such locality.

It is further ordered, That the charges set out in paragraphs 17, A, C, D, and E of the complaint be and the same are hereby dismissed

without prejudice to the right of the Commission to proceed thereon in the future in any appropriate manner.

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

IN THE MATTER OF
WORLD'S STAR-MALLOCH, INC., ALSO HAVING TRADED
AS "STRAND-SEALED HOSIERY CO."

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

Docket 3623. Complaint, Oct. 4, 1938—Decision, Jan. 9, 1943

Where a corporation, engaged in competitive interstate sale and distribution to the purchasing public of various articles of wearing apparel, including lingerie, hosiery, shirts, and dresses, principally through sales agents whom it obtained through advertisements in newspapers and periodicals of wide distribution and to whom it forwarded, upon receipt of inquiries, circular letters and other advertising material, supplying to those who agreed to serve in such capacity a sales kit which included various leaflets, circulars, pamphlets and other advertising material to be used by them and exhibited to prospective purchasers—

- (a) Represented through representations in its said advertising, directly and by implication, that its "Strand-Sealed" hosiery was made by a secret process, use of which greatly increased its wearing qualities and enabled it to give two or three times as much wear as other hosiery; and
- (b) Represented that its said product was proof against snags and runs, and that the number of turns or twists used therein was greatly in excess of that used in other hosiery;

The facts being that, as disclosed by examination and report made by the Bureau of Standards, the process employed by it was not secret but was in fairly common use among manufacturers; the number of turns or twists used by it was about the same as that of other hosiery on the market; and process commonly employed among modern manufacturers of "sealing" their hosiery or silk yarn used therein through subjection to certain solutions had not been used to any extent in its said hosiery, which was not proof against snags or runs, and which did not give any degree of wear substantially greater than other hosiery; and

- (c) Portrayed in a pamphlet a purported sample of the silk thread used in the manufacture of its said products which had a fairly high degree of twist, and a sample of the thread used in "ordinary" silk hosiery which had very little twist, in connection with which it claimed superior advantages for its hosiery with respect to snags and breaks;

Notwithstanding that the pictured strands or threads claimed to be representative of those used in its said product had a considerably higher degree of twist than the strands in the product itself; and

- (d) Represented that persons acting as sales agents for it might reasonably expect, under normal conditions, to earn amounts ranging up to \$1.30 per hour, \$15 per day, and \$47 per week;

The facts being that the highest amount which had ever been earned by its representatives was \$20 per week and that not in recent years; and figures given were greatly in excess of the amounts which agents could reasonably expect to earn under normal conditions; and

(e) Represented that its representatives received from it free of charge a sample outfit and various articles of merchandise for their own use through such statements, among others, as "Outfit Free"; "Your Own Lingerie Free"; "Sample outfit with 2 stockings offered free"; "Free Dresses"; etc.;

The facts being it did not supply sample outfits to its representatives free of charge or give them any free articles for their own use; a "gift" referred to in its advertising was in fact only a coupon which entitled representative to an article of clothing in event of sale by him of enough products within ten days to earn commissions amounting to \$5; and articles referred to as given "free" were in no sense a gift, but were in fact part of the agent's compensation for services rendered in sale of its merchandise;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said hosiery, thereby causing its purchase thereof, and also causing it to undertake sale of said products in preference to those of competitors, whereby trade was diverted unfairly to said corporation 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 and deceptive acts and practices therein.

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

Mr. J. R. Phillips, Jr. and Mr. Carrel F. Rhodes for the Commission.
Butterfield, Keeney & Amberg, of Grand Rapids, Mich., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that World's Star-Malloch, Inc., a corporation, also having traded as Strand-Sealed Hosiery Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a preceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, World's Star-Malloch, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan and having its office and principal place of business at 501 Ottawa Avenue, N. W., in the City of Grand Rapids, State of Michigan. The respondent has also traded as Strand-Sealed Hosiery Co.

PAR. 2. Respondent is now and has been for more than six years last past engaged in the business of selling and distributing lingerie, hosiery, underwear, shirts, dresses, and other wearing apparel. The respondent sells said products by direct selling methods and

by means of salespersons and representatives (hereinafter referred to as "distributors"). Respondent sells said products to members of the purchasing public situated in various States of the United States and in the District of Columbia and causes said products when sold by it to be transported from its aforesaid place of business in the State of Michigan to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Michigan, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said products among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with partnerships, firms, and individuals selling and distributing lingerie, hosiery, underwear, shirts, dresses, and other wearing apparel. Among such competitors in said commerce are many who do not in any manner misrepresent the quality and character of their products, the earnings of the distributors of their products, the merchandise which they give free of charge to such distributors, and who do not make any other false statements in connection with the sale and distribution of their products.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said products and to procure the services of distributors to sell its said products, respondent has caused false advertisements containing representations and claims with respect to the quality and character of its hosiery, the earnings of the distributors of its products and the merchandise purported to be given free of charge by the respondent to such distributors to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements in newspapers, trade magazines, and other publications, having a general circulation throughout various States of the United States, through letters, catalogs, circulars, and leaflets distributed among prospective purchasers and prospective distributors of its said products, situated in various States of the United States, and through other means. Among and typical of representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Help Wanted—Female. Earn \$15 Commission Daily. Free dresses. Sell frocks, three for \$3.98. Amazing values, stunning fabrics, enchanting styles. Quick sales. Experience unnecessary. Outfit free.

Help Wanted—Female. Your own lingerie free. Up to \$20 per week with amazing new form-tailored lingerie. World's Star-Malloch, Department 554, Grand Rapids, Mich.

Sales Agents Wanted—Ladies.

Earn \$28 Commissions in week. Demonstrate amazing "Strand-Sealed" Silk Hosiery; secret weaving process doubles wear; strongest money-back guarantee; order your hosiery free; sample outfit with two stockings offered free; state size. Strand-Sealed Co., Dept 94, Grand Rapids, Mich.

Even spare-time will bring you up to \$5 in a day.

Lots of folks working with me are making \$1.30 an hour right from the start. Spare-time workers are making from \$18 to \$47 a week. Full-time workers are making much more.

Every hour you devote to selling our lines means an average of \$1.30 an hour clear profit to you.

You, too, can have FREE DRESSES and FREE HOSIERY, LINGERIE and UNDERWEAR, too!

"Strand-sealing". It makes silk thread stronger and more elastic—"proofs" it against SNAGS, RUNS and ordinary WEAR.

Strand-Sealed Silk hosiery doubles the wear in every pair.

DOUBLE—even triple wear you have been getting.

Secret weaving process—doubles wear.

A remarkable scientific discovery insures a much longer wear.

Free handbag selling outfit, including two actual stockings.

Ordinary silk hosiery (not "Strand-Sealed") snaps so easily because it is woven of thin, delicate silk thread. Under the microscope you would see that this thread is made of many strands of raw silk twisted together. The raw silk fibers are fuzzy and seem to reach out to catch on any rough object. When one is caught and breaks, the thread is snagged and a run results.

That problem has been solved by our new and exclusive, "Strand-Sealed" silk process. With this wonderful new secret process all loose, tiny strands are first twisted together. Then the silk thread is placed in a secret solution which "solidifies" each and every strand. The fibers are smoothed down, making a thread that is smooth, strong and slippery. It glides easily, over rough objects that would snag ordinary silk, hosiery thread. It is this marvelous treatment that enables "Strand-Sealed" Silk Hosiery to give much longer wear.

WHY ORDINARY SILK HOSIERY SNAGS SO EASILY. Silk hosiery thread is made up of so many hair-like strands, so delicate as to be almost invisible to the naked eye. In ordinary silk hosiery these fragile strands are loosely twisted together and the thread has a "fuzzy" surface. It snags easily, for there are many separate strands to catch and break. This is responsible for the destruction of thousands of dollars worth of hosiery every year. Now, on the opposite page, see how this problem has been solved by our exclusive "Strand-Sealing" process. See for yourself—Why ordinary silk hosiery snags so easily, and how exclusive "Strand-Sealed" silk thread resists snags and runs.

The pamphlet, distributed by the respondent as aforesaid, from which the last above quotation is taken portrays what respondent represents to be a sample of the silk thread used in the manufacture of "ordinary silk hosiery" and a sample of the silk thread used in the

manufacture of respondent's hosiery. The sample of the silk thread which respondent represents to be used in the manufacture of ordinary hosiery has very little twist. The sample of the silk thread which respondent represents is used in the manufacture of its hosiery is a three-thread silk, each thread being composed of nine strands.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto, not herein set out, which purport to be descriptive of the quality and nature of respondent's hosiery and the income earned by the distributors of respondent's products and the articles of merchandise given free of charge by the respondent to such distributors, respondent has represented directly and by implication, among other things, that respondent's hosiery is manufactured pursuant to a secret weaving process or a remarkable scientific discovery which triples or doubles the wear thereof; that such hosiery is manufactured pursuant to a secret process not used in the manufacture of the hosiery sold and distributed by competitors of respondent; that such hosiery is "proof" against snags, runs, and ordinary wear; that such hosiery contains a number of turns or twists greatly in excess of those used in the manufacture of a hosiery sold and distributed by competitors of respondent; that the above described pamphlet contains a true representation of the silk threads used in the manufacture of ordinary silk hosiery and the silk thread used in the manufacture of respondent's hosiery; that the average income earned by the distributors of respondent's products is comparable to the income represented to be earned by such persons in the aforesaid advertisements and that a person who contracts or agrees with the respondent to distribute its products may expect, under normal conditions or circumstances, to earn such amounts; that distributors of respondent's products receive free of charge from the respondent dresses, hosiery, lingerie, underwear, and a sample outfit.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading and untrue and constitute false advertisements. In truth and in fact the hosiery sold and distributed by the respondent as aforesaid is not manufactured pursuant to a secret manufacturing process or a remarkable scientific discovery which triples or doubles the wear thereof. Such hosiery is not manufactured pursuant to a secret process, not used in the manufacture of the hosiery sold and distributed by the said competitors of respondent. Such hosiery is not "proof" against runs, snags, or ordinary wear. Such hosiery does not contain

a number of twists or turns greatly in excess, or in excess, of those used in the manufacture of the hosiery sold and distributed by competitors of respondent. The above described pamphlet does not contain a true representation of the silk thread used in the manufacture of respondent's silk hosiery. The average earnings of the distributors of respondent's products, under normal conditions or circumstances, are much less than the amounts represented as being earned by such persons in the aforesaid statements and representations. Such distributors do not consistently earn amounts equal to or comparable to the amounts described in such advertisements. The distributors of respondent's products do not receive from the respondent free dresses, hosiery, lingerie, underwear, or a sample outfit.

The true facts are that the respondent's hosiery is manufactured from a four-thread silk, having approximately 18.5 turns left (Z) per inch. It is the opinion of experts in the hosiery business that in the manufacture of hosiery the use of a higher twist makes the hosiery more durable and less likely to snag or run. The aforesaid twist used by the respondent in the manufacture of its hosiery is not an unusual or extraordinary twist in silk hosiery and does not exceed the twist used in the manufacture of the ordinary silk hosiery sold and distributed by the said competitors of respondent. Respondent does not give to the distributors of its products a free outfit or free hosiery, lingerie, dresses, or underwear, but in truth and in fact supplies bonus coupons to such persons and after sales are made and commissions earned in certain designated amounts, by such persons, the said coupons may be exchanged by such distributors with the respondent for hosiery, lingerie, underwear, shirts, and dresses.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to the quality and character of its hosiery has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's hosiery possesses the properties claimed and represented and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's hosiery. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to the income earned by distributors of respondent's products and the articles of merchandise

purported to be given free by the respondent to such distributors has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of prospective distributors of respondent's products into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into agreeing or contracting with the respondent to become distributors of its products and into distributing such products in preference to distributing the products of the competitors of the respondent.

As a result trade has been diverted unfairly to the respondent from its said competitors in said commerce who truthfully advertise the quality and nature of their products, the income earned by the distributors of their products and the articles of merchandise which they give free of charge to such distributors, as described in paragraph 3 hereof. In consequence thereof, injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States, and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 4, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, World's Star-Malloch, Inc., a corporation, also having traded as "Strand-Sealed Hosiery 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. 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, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed by 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, World's Star-Malloch, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 501 Ottawa Avenue, N. W., Grand Rapids, Mich. Respondent has also operated under the trade name "Strand-Sealed Hosiery Co.," but the use of this name was discontinued in 1937. Respondent is now and for a number of years last past has been engaged in the sale and distribution of various articles of wearing apparel, including, among others, lingerie, hosiery, shirts, and dresses.

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 Michigan 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 sale and distribution of its merchandise respondent is and has been in substantial competition with other corporations, and with partnerships, firms, and individuals, engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent's sales are made principally through sales agents or representatives who contact and solicit the purchasing public in their respective localities and territories. To obtain such agents and representatives, respondent inserts advertisements in numerous newspapers and periodicals published in various places throughout the United States and having wide distribution among the members of the public. Upon obtaining inquiries from prospective agents, respondent forwards to such prospects circular letters and other advertising material soliciting their services in the sale of its products and containing numerous statements with respect to respondent's products and the earnings which may be obtained by such prospects from the sale thereof. To those who agree to serve as sales representatives respondent supplies a sales kit which includes, among other things, various leaflets, circulars, pamphlets, and other advertising

Findings

36 F. T. C.

material to be used by the representative and exhibited to prospective purchasers. Among and typical of the statements and representations which have appeared in respondent's newspaper advertisements, circular letters, and other advertising material are the following:

Earn \$15 commission daily. Free dresses. Sell Frocks, 3 for \$3.98. Amazing values, Stunning Fabrics, Enchanting styles. Quick Sales. Experience unnecessary. Outfit free. (Com. Ex. No. 19-B)

YOUR own lingerie free and up to \$20 in a week with amazing new "Form-Tailored" lingerie. World's Star-Malloch, Dept. 5404, Grand Rapids, Mich. (Com. Ex. No. 3)

EARN to \$28 commissions in week; demonstrate amazing "Strand-Sealed" silk hosiery; secret weaving process doubles wear; strongest money-back guarantee; earn your hosiery free; sample outfit with 2 stockings offered free; state size. Strand-Sealed Co., Dept. 94, Grand Rapids, Mich. (Com. Ex. No. 4)

* * * Even spare-time will bring you up to \$5 in a day. (Com. Ex. No. 8)

Lots of folks working with me are making \$1.30 an hour right from the start. Spare time workers are making from \$18 to \$47 a week. Full time workers are making much more.

* * * Every hour you devote to selling our lines means an average of \$1.30 an hour clear profit to you. * * *

You, too, can have FREE DRESSES and FREE HOSIERY, LINGERIE and UNDERWEAR, too! * * * (Com. Ex. No. 21-A)

* * * Free Handbag Selling Outfit, including 2 actual stockings. * * * (Com. Ex. No. 13)

* * * "Strand-Sealing." It makes silk thread stronger and more elastic—"proofs" it against SNAGS, RUNS and ordinary WEAR. * * * (Com. Ex. No. 7)

"Strand-Sealed"

SILK HOSIERY

"Double the Wear

in Every

Pair" (Com. Ex. No. 6)

* * * DOUBLE—even TRIPLE the wear you have been getting * * * (Com. Ex. No. 8)

* * * secret weaving process doubles wear. * * * (Com. Ex. No. 22)

A Remarkable Scientific Discovery Assures Much Longer Wear (Com. Ex. No. 9)

Ordinary silk hosiery (not "Strand-Sealed") snap so easily because it is woven of thin, delicate silk thread. Under the microscope you would see that this thread is made of many strands of raw silk, twisted together. The raw silk fibres are fuzzy and seem to reach out to catch on any rough object. When one is caught and breaks, the thread is snagged and a run results.

That problem has been solved by our new and exclusive, "Strand-Sealed" silk process. With this wonderful new secret process all loose, tiny strands are first twisted together. Then the silk thread is placed in a secret solution which "solidifies" each and every strand. The fibres are smoothed down, making a thread that is smooth, strong and slippery. It glides easily over rough objects that would snag ordinary silk hosiery thread. It is this marvelous new treat-

76

Findings

ment that enables "Strand-Sealed" Silk Hosiery to give much longer wear.
(Com. Ex. No. 8)

SEE FOR YOURSELF.

Why
Ordinary Silk
Hosiery Snags
So Easily * * *
and
how
Exclusive
"STRAND-SEALED"
Silk Thread
Resists Snags and
Runs

* * * * *

WHY
Ordinary Silk
Hosiery
SNAGS
So Easily

Silk hosiery thread is made up of many hair-like strands, so delicate as to be almost invisible to the naked eye. In ordinary silk hosiery these fragile strands are loosely twisted together and the thread has a "fuzzy" surface. It snags easily, for there are many separate strands to catch and break. This is responsible for the destruction of thousands of dollars worth of hosiery every year. Now on the opposite page, see how this problem has been solved by our exclusive "Strand-Sealing" process. (Com. Ex. No. 24)

The last excerpt quoted above is from a pamphlet which purported to portray a sample of the silk thread used in the manufacture of respondent's hosiery and a sample of the silk thread used in the manufacture of other hosiery.

PAR. 5. Through the use of the foregoing statements and representations, and others of a similar nature, respondent has represented, directly and by implication, that its hosiery designated as "Strand-Sealed" hosiery is manufactured by a secret process not used in the manufacture of other hosiery; that the use of such process greatly increases the wearing qualities of respondent's hosiery and that such hosiery gives two or three times as much wear as other hosiery; that such hosiery is proof against snags and runs; that the number of turns or twists used in the manufacture of such hosiery is greatly in excess of the number used in other hosiery; that the pamphlet referred to above portrays true samples of the silk threads used in the manufacture of respondent's hosiery and the silk threads used in the manufacture of other hosiery; that persons acting as sales agents for respondent may reasonably expect under normal conditions or circumstances to earn amounts ranging up to \$1.30 per hour, \$15.00 per

day, and \$47.00 per week; and that such persons receive from respondent free of charge a sample outfit and various articles of merchandise for their own use.

PAR. 6. Examinations and tests of respondent's hosiery were made by the National Bureau of Standards and the written report of the Bureau is in evidence, together with the testimony of the representative of the Bureau who conducted the tests and the testimony of another expert on hosiery who witnessed the tests. The hosiery was found to be made of what is known as a four-thread silk yarn, each thread having ten filaments. The amount of twist in the yarn was determined from an examination of ten threads, each ten inches in length. The average twist of these ten specimens was 12.7 turns per inch. The range of the threads was from 11.5 turns per inch to 15.3 turns per inch. The filaments in the threads were twisted together with a very small amount of twist. Upon examination it was found that the filaments separated readily from one another, which disclosed that there was no permanent sealing or solidification among the threads or filaments.

The number of turns or twists used in the manufacture of silk hosiery varies considerably, depending upon the type and grade of hosiery and upon the practice of the various manufacturers. Generally speaking, hosiery having a higher number of twists is regarded as possessing greater durability than hosiery having a smaller number. The average or more frequently used twist is approximately fifteen turns per inch. It thus appears that respondent's hosiery is of about the same twist as other hosiery on the market. It is a common practice among modern manufacturers of hosiery to subject their hosiery or the silk yarn used therein to certain solutions, the process being sometimes referred to as "sealing." As a result of this process the threads and filaments are coated with a fairly insoluble material, resinous in nature. The threads and filaments are bound more closely together and are made smoother, thus increasing the resistance of the hosiery to snags and runs. The tests made of respondent's hosiery demonstrate, however, that this process had not been used to any substantial extent, there being no sealing or solidification of the threads or filaments in the hosiery.

An examination was also made by the Bureau of Standards of the purported samples appearing in respondent's advertising pamphlet (Com. Ex. No. 24). It was found that the strands or threads claimed by respondent to be representative of the material used in "ordinary" silk hosiery had very little twist, whereas the strands claimed to be representative of those used in respondent's hosiery had a fairly high degree of twist. The latter sample, however, was found not to be

representative of the material actually used in respondent's hosiery, the strands in the sample having a considerably higher twist than the strands in the hosiery itself.

Respondent's hosiery is not proof against snags or runs. It is of average quality and durability, but does not give two or three times as much wear as other hosiery, or any degree of wear which is substantially greater than other hosiery. The process used in the manufacture of respondent's hosiery is not a secret process but is in fairly common use among hosiery manufacturers.

The record further discloses that the average earnings of respondent's sales representatives are not in excess of approximately \$50 per month. It appears that the highest amount which has ever been earned by such representatives was \$20 per week, and none of the sales agents has earned that much during recent years. The figures given by respondent in its advertising of \$1.30 per hour, \$15 per day, and \$47 per week appear to be clearly excessive, being greatly in excess of the amounts which agents could reasonably expect to earn under normal conditions or circumstances. Respondent does not supply sample outfits to its representatives free of charge, nor does respondent give its representatives any free articles of merchandise for their own use. The "gift" referred to by respondent in its advertising is in fact only a coupon which entitles the representative to an article of clothing if the representative sells enough of respondent's products within ten days to earn commissions amounting to \$5. The articles referred to by respondent as being given "free" are in no sense a gift but are in fact a part of the agent's compensation for services rendered in the sale of respondent's merchandise.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to its hosiery, the amounts to be earned in the sale of its products, and its offers of free sample outfits and merchandise, as set forth herein, are erroneous and misleading. The Commission further finds that the use by respondent of samples purporting to depict the difference between respondent's hosiery and other hosiery is misleading, in that the purported sample of the material used in respondent's hosiery is not a true sample.

PAR. 8. The acts and practices of the respondent as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, characteristics, and quality of respondent's hosiery, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's hosiery as a result of such deception. Re-

spondent's representations with respect to the earnings and purported gifts which may be obtained from the sale of respondent's products also have the tendency and capacity to cause a substantial number of members of the public to undertake the sale of respondent's products in preference to the products of respondent's competitors. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors, among whom are those who do not engage in such 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 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 the exceptions to such report, 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, World's Star-Malloch, Inc., a corporation, trading under its corporate name or under the name "Strand-Sealed Hosiery Co." or any other name, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's hosiery, lingerie, shirts, dresses, and other wearing apparel, do forthwith cease and desist from:

1. Representing that respondent's hosiery designated as "Strand-Sealed" hosiery, or any other hosiery of substantially similar type or construction, is manufactured by a secret process not used in the manufacture of other hosiery.

2. Representing that said hosiery gives two or three times as much wear as other hosiery, or that the wearing qualities of said hosiery are substantially greater than those of other hosiery.

3. Representing that said hosiery is proof against snags or runs.

4. Representing that the number of turns or twists used in the manufacture of said hosiery is substantially in excess of the number used in other hosiery.

5. Using in respondent's advertising or supplying to respondent's sales agents or representatives samples purporting to portray the material used in the manufacture of respondent's hosiery when such purported samples are not in fact representative of the material actually used in such hosiery.

6. Representing that respondent's sales agents or representatives earn \$1.30 per hour, \$15 per day, or \$47 per week, or any amounts in excess of those which are usually or customarily earned by such agents or representatives under normal conditions and circumstances.

7. Representing that respondent supplies sample outfits to its agents or representatives free of cost when a charge is in fact made for such outfits.

8. Using the word "free" or "gift," or any other word of similar import, to designate, describe, or refer to any merchandise which is not in fact given by respondent free of charge but is furnished as compensation for services rendered.

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
THEOPHILUS J. CRAIG

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

Docket 4600. Complaint, Sept. 29, 1941—Decision, Jan. 9, 1943

Where a corporation engaged in competitive interstate sale and distribution of tombstones and monuments; through advertisements in newspapers of general circulation and in periodicals, circulars, and other advertising material—

- (a) Represented that the prices at which he offered said products were 30 percent below retail prices therefor and greatly less than competitors' prices, and that his price of \$189 was special and that the regular and customary price was \$260; when in fact his said prices were not less than the usual retail prices or 30 percent less than competitors'; and said price of \$260 was wholly fictitious, and usual price therefor was said lesser figure plus certain charges for polishing;
- (b) Represented that he quarried the granite from which his products were manufactured in quarries which he owned and operated; when, in fact, he filled orders for such products with granite produced in quarries which he did not own, operate, or control;
- (c) Represented, through picturizations, that his said product was polished in its entirety, including the front, back, top, sides, and base; when in fact he did not finish his tombstones and monuments in their entirety but made additional charges for polishing certain portions thereof; and
- (d) Represented and implied that said products were made from granite quarried in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I.; when in many instances they were made from granite produced in quarries in other parts of the United States;

With effect of misleading and deceiving a substantial portion of the purchasing public, which prefers to deal directly with the owner of the quarry as affording such advantages as better price, selection, and adjustments, into the mistaken belief that said misrepresentations and implications were true, and as a result, into purchasing its said products; whereby trade was diverted to him from competitors, including those who do not misrepresent their products or prices:

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Theophilus J. Craig, an individual, hereinafter referred to as respondent, has violated the

provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Theophilus J. Craig, is an individual, with his office and principal place of business located at 14 Federal Avenue, Quincy, Mass. The respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of his said business, the respondent is in substantial competition with other individuals, and with corporations, partnerships, and firms engaged in the sale and distribution of tombstones and monuments in said commerce.

PAR. 3. To induce the purchase of his said tombstones and monuments, the respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to his said products. Such statements and representations are inserted in newspapers having a general circulation and in periodicals, 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:

Better monuments at a saving of 30%

Buy directly from the quarry owner.

Monument \$189.

4 ft. 10 inches long

Regularly \$260.

Craig (Everlasting)

60 inches long \$189

Barre, Vt.; Quincy, Westerly and All

Colored Granites.

(Said statements are accompanied by a picturization of a tombstone or monument polished in its entirety, including the front, back, top, sides, and base.)

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 his advertisements that the prices at which he offers his tombstones and monu-

ments for sale are 30 percent below the usual retail prices for said products and 30 percent less than competitors' prices for similar products; that respondent quarries the granite from which said tombstones and monuments are manufactured by him in quarries owned and operated by respondent; that respondent's tombstones and monuments are polished in their entirety, including the front, back, top, sides, and base; that the price of \$189 at which said monuments are offered for sale by the respondent is a special price, and that the regular and customary price at which said tombstones and monuments are offered for sale and sold is \$260. Respondent also represents and implies that said tombstones and monuments are manufactured from granite quarried in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I. Respondent also represents that said tombstones and monuments are "everlasting" and will last for an indefinite and indeterminate period of time.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the prices at which respondent offers for sale and sells his tombstones and monuments are not less than the usual retail prices for said products or 30 percent less than competitors' prices for similar products. Respondent does not quarry the granite from which said tombstones and monuments are manufactured from quarries owned and operated by him, but fills orders for such products with granite produced in quarries which respondent does not own, operate, or control. The respondent does not finish or polish his tombstones and monuments in their entirety as shown in said picturization but makes additional charges for polishing certain portions thereof. The price of \$260 represented by respondent as being the usual and customary retail price for said tombstones and monuments is wholly fictitious and does not in any sense represent the actual retail price for such tombstones and monuments. Said products have not, in the usual and regular course of trade sold for \$260. Said price of \$260 is far in excess of the price at which said products are usually and customarily sold in the normal course of business. The usual price of such products is \$189, plus certain charges for polishing.

In many instances, the tombstones and monuments represented by respondent as being made of granite produced in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I., are not made from granite so produced but from granite produced in quarries located in other and distant parts of the United States. Respondent's said products are not "everlasting" and will not last for an indefinite or indeterminate period of time, but will stain, tarnish, fade, and otherwise deteriorate, and show, in some form or manner, the ravages of time.

PAR. 6. A substantial portion of the purchasing public prefers to deal directly with the owner of the quarry producing the products in purchasing tombstones and monuments, under the impression and belief that by so dealing certain advantages may be obtained, such as the elimination of the profit of an intermediate dealer, selection from a more complete and higher quality line of products, and a more prompt adjustment of claims made under guarantees or warranties.

PAR. 7. There are among the competitors of respondent, as described in paragraph 2 hereof, many who sell and distribute tombstones and monuments who do not in any manner misrepresent the grade, material or quality of their said products, or the price at which their said products are sold, or other matters pertaining thereto.

PAR. 8. The use by the respondent of the aforesaid acts, practices, and methods, in connection with the offering for sale, sale, and distribution of said tombstones and monuments, has had, and now has, the tendency and capacity to mislead and deceive, and does mislead and deceive, a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive statements, representations, and implications are true, and because of such erroneous and mistaken belief causes a substantial portion of the purchasing public to purchase respondent's said products in said commerce. As a result thereof, trade in commerce between and among the several States of the United States and the District of Columbia has been unfairly diverted to the respondent from his competitors in said commerce, to their injury and to the injury of the public.

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 September 29, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Theophilus J. Craig, an individual, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 22, 1941, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Theophilus J. Craig, is an individual with his office and principal place of business located at 14 Federal Avenue, Quincy, Mass. The respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of his said business, the respondent is in substantial competition with other individuals, and with corporations, partnerships, and firms engaged in the sale and distribution of tombstones and monuments in said commerce.

PAR. 3. To induce the purchase of his said tombstones and monuments, the respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to his said products. Such statements and representations are inserted in newspapers having a general circulation and in periodicals, 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:

Better monuments at a saving of 30% Buy directly from the quarry owner.
Monument \$189. 4 ft. 10 inches long Regularly \$260.

Craig. (Everlasting) 60 inches long \$189 Barre, Vt.; Quincy, Westerly and All Colored Granites.

(Said statements are accompanied by a picturization of a tombstone or monument polished in its entirety, including the front, back, top, sides, and base.)

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 his advertisements that the prices at which he offers his tombstones and monuments for sale are 30 percent below the usual retail prices for said products

and 30 percent less than competitors' prices for similar products; that respondent quarries the granite from which said tombstones and monuments are manufactured by him in quarries owned and operated by respondent; that respondent's tombstones and monuments are polished in their entirety, including the front, back, top, sides, and base; that the price of \$189 at which said monuments are offered for sale by the respondent is a special price, and that the regular and customary price at which said tombstones and monuments are offered for sale and sold is \$260. Respondent also represents and implies that said tombstones and monuments are manufactured from granite quarried in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the prices at which respondent offers for sale and sells his tombstones and monuments are not less than the usual retail prices for said products or 30 percent less than competitors' prices for similar products. Respondent does not quarry the granite from which said tombstones and monuments are manufactured from quarries owned and operated by him, but fills orders for such products with granite produced in quarries which respondent does not own, operate, or control. The respondent does not finish or polish his tombstones and monuments in their entirety as shown in said picturization but makes additional charges for polishing certain portions thereof. The price of \$260 represented by respondent as being the usual and customary retail price for said tombstones and monuments is wholly fictitious and does not in any sense represent the actual retail price for such tombstones and monuments. Said products have not, in the usual and regular course of trade, sold for \$260. Said price of \$260 is far in excess of the price at which said products are usually and customarily sold in the normal course of business. The usual price of such products is \$189, plus certain charges for polishing.

In many instances, the tombstones and monuments represented by respondent as being made of granite produced in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I., are not made from granite so produced but from granite produced in quarries located in other and distant parts of the United States.

PAR. 6. A substantial portion of the purchasing public prefers to deal directly with the owner of the quarry producing the products in purchasing tombstones and monuments, under the impression and belief that by so dealing certain advantages may be obtained, such as the elimination of the profit of an intermediate dealer, selection from a more complete and higher quality line of products, and a more prompt adjustment of claims made under guarantees or warranties.

PAR. 7. There are among the competitors of respondent, as described in paragraph 2 hereof, many who sell and distribute tombstones and monuments who do not in any manner misrepresent the grade, material, or quality of their said products, or the price at which their said products are sold, or other matters pertaining thereto.

PAR. 8. The use by the respondent of the aforesaid acts, practices and methods in connection with the offering for sale, sale, and distribution of said tombstones and monuments, has had, and now has, the tendency and capacity to mislead and deceive, and does mislead and deceive, a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive statements, representations, and implications are true, and because of such erroneous and mistaken belief causes a substantial portion of the purchasing public to purchase respondent's said products in said commerce. As a result thereof, trade has been unfairly diverted to the respondent from his competitors who are engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Theophilus J. Craig, 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 tombstones and monuments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the prices at which respondent offers his tombstones and monuments for sale are 30 percent below the usual retail prices for said products or any other savings in excess of the actual savings from the prices charged by respondent's competitors for similar products made of the same or comparable materials.

2. Representing that the respondent owns, operates, or controls the quarry from which granite is quarried and manufactured into tombstones and monuments, unless and until the respondent actually owns, operates, or directly and absolutely controls the quarry wherein said granite is quarried.

3. Using picturizations of tombstones and monuments which appear to be completely polished, including the front, back, top, sides, and base, when orders for the tombstones or monuments so pictured are filled with tombstones or monuments not polished in their entirety or an additional charge is made for a completely polished tombstone or monument.

4. Representing that respondent's tombstones and monuments are manufactured from granite quarried in the vicinity of Barre, Vt., Quincy, Mass., Westerly, R. I., or from any other particular granite, unless said tombstones and monuments are in fact produced or manufactured from the particular granite specified.

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

IN THE MATTER OF
ALBERT GEORGE, TRADING AS GEORGE & THOMAS
CONE COMPANY

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

Docket 4837. Complaint, Sept. 17, 1942—Decision, Jan. 13, 1943

Where an individual, engaged in the manufacture and competitive interstate sale and distribution of ice cream cones which he assembled in 100-cone boxes or cartons—

Sold his said products to dealers, jobbers and ice cream manufacturers packed in boxes or cartons as aforesaid, concealed within each of which was enclosed by him, together with explanatory notice captioned "Save This Coupon," a black, red or green coupon, respectively redeemable for 5, 500, or 1,000 cones without further charge; and thereby

Supplied to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in the sale of his products in accordance with aforesaid plan, under which fact as to whether a dealer would receive a coupon good for 5, 500, or 1,000 additional cones was thus determined wholly by lot or chance; contrary to an established public policy of the United States Government, and in competition with many who do not use any such plan or method;

With the result that many persons were attracted by his method or plan and element of chance involved therein, and thereby induced to buy and sell his merchandise in preference to that offered and sold by his aforesaid competitors; and with tendency and capacity, through use of such method and because of said game of chance, to divert, unfairly, trade to him from his competitors aforesaid:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and 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 Albert George, an individual, trading and doing business as George & Thomas Cone 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, Albert George, is an individual, trading and doing business as George & Thomas Cone Co., with his principal

office and place of business located at 836-838 South Irvine Avenue, Sharon, Pa. Respondent is now and for sometime last past has been engaged in the manufacture of ice cream cones and in the sale and distribution thereof to dealers, jobbers, and ice cream manufacturers in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from its aforesaid place of business in Sharon, Pa., to purchasers thereof at their respective points of location in the various States of the United States other than the State of Pennsylvania and in the District of Columbia. There is now and has been for some time last past a course of trade by respondent in said ice cream cones in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is now and has been in competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent has sold and distributed, and does sell and distribute, his said ice cream cones by means of a lottery scheme, game of chance, or gift enterprise. Respondent sells and assembles certain of his cones in boxes or cartons containing 100 cones. Packed in each box or carton of said cones is a coupon; one of said coupons printed in black ink bears the following legend:

SAVE THIS COUPON

One coupon free with each 100 cones.

20 coupons good for 100 cones.

Green coupons good for 1000 cones.

Red coupons good for 500 cones.

All coupons redeemable by your own dealer.

Respondent in other boxes of his cones packs coupons printed in green ink bearing the legend:

SAVE THIS COUPON

Return to your dealer and get 1000

Hi-Top cake cones free;

and in other cartons are packed coupons printed in red ink bearing the legend:

SAVE THIS COUPON

Return to your dealer and get 500

Hi-Top cake cones free,

The coupons are sealed in the cartons of cones and retail dealers who purchase said cones cannot ascertain whether they will receive a coupon good for five cones or one good for 1,000 or 500 cones until the cartons have been delivered and opened. Whether a dealer will receive a coupon good for 5, 500, or 1,000 additional cones is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the above-described cartons of ice cream cones containing the coupons resell such carton of cones as packed by respondent to retail dealers and redeem the said coupons in accordance with the above-described legends. The respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale and distribution of his 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 said ice cream cones in the manner above-described involves a game of chance, gift enterprise, or lottery scheme. Many individuals, firms, and corporations who manufacture, sell, or distribute merchandise in competition with the respondent as above alleged do not use the above sales plan or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many dealers are attracted by respondent's said method and sales plan and by the element of chance involved therein and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or method by respondent because of said game of chance or gift enterprise 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 sales plans or methods.

PAR. 5. The aforesaid acts and practices of respondent as hereinabove alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission 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, 1942, issued and thereafter served its complaint in this proceeding upon respondent, Albert George, trading as George & Thomas Cone Co., charging him with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of the said act. On November 5, 1942, the respondent filed his answer, in which answer he admitted all the material allegations of facts set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Albert George, is an individual, trading and doing business as George & Thomas Cone Co., with his principal office and place of business located at 836-838 South Irvine Avenue, Sharon, Pa. Respondent is now and for sometime last past has been engaged in the manufacture of ice cream cones and in the sale and distribution thereof to dealers, jobbers, and ice cream manufacturers 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 Sharon, Pa., to purchasers thereof at their respective points of location in the various States of the United States other than the State of Pennsylvania and in the District of Columbia. There is now and has been for some time last past a course of trade by respondent in said ice cream cones in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is now and has been in competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent has sold and distributed, and does sell and distribute, his said ice cream cones by means of a lottery scheme, game of chance, or gift enterprise. Respondent sells and

Findings

36 F. T. C.

assembles certain of his cones in boxes or cartons containing 100 cones. Packed in each box or carton of said cones is a coupon; one of said coupons printed in black ink bears the following legend:

SAVE THIS COUPON

One coupon free with each 100 cones.

20 coupons good for 100 cones.

Green coupons good for 1000 cones.

Red coupons good for 500 cones.

All coupons redeemable by your own dealer.

Respondent in other boxes of his cones packs coupons printed in green ink bearing the legend:

SAVE THIS COUPON

Return to your dealer and get 1000

Hi-Top cake cones free;

and in other cartons are packed coupons printed in red ink bearing the legend:

SAVE THIS COUPON

Return to your dealer and get 500

Hi-Top cake cones free.

The coupons are sealed in the cartons of cones and retail dealers who purchase said cones cannot ascertain whether they will receive a coupon good for 5 cones or one good for 1,000 or 500 cones until the cartons have been delivered and opened. Whether a dealer will receive a coupon good for 5, 500, or 1000 additional cones is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the above-described cartons of ice cream cones containing the coupons resell such cartons of cones as packed by respondent to retail dealers and redeem the said coupons in accordance with the above-described legends. The respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale and distribution of his merchandise by and through the use thereof and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of said ice cream cones in the manner above described involves a game of chance, gift enterprise, or lottery scheme. Many individuals, firms, and corporations who manufacture, sell, or distribute merchandise in competition with the respondent as above

found do not use the above sales plan or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many dealers are attracted by respondent's said method and sales plan and by the element of chance involved therein and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or methods by respondent because of said game of chance or gift enterprise has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent sales plans or methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Albert George, trading as George and Thomas Cone Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of ice cream cones or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from.

1. Selling or distributing ice cream cones or other merchandise so packed and assembled that sales of such cones or other merchandise are to be made or, due to the manner in which such cones or other merchandise is packed and assembled at the time it is sold by the

Order

36 F. T. C.

respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or distributing ice cream cones or other merchandise together with coupons so designed or printed that the use of said coupons in the sale or distribution of said cones or other merchandise constitutes the operation of a game of chance, gift enterprise, or lottery scheme.

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

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

Complaint

IN THE MATTER OF

THE LEONARD CUSTOM TAILORS CO., ETC.

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

Docket 4845. Complaint, Oct. 2, 1942—Decision, Jan. 14, 1943

Where a corporation, engaged in the manufacture and interstate sale and distribution of men's clothes; in advertisements in pamphlets, newspapers, magazines, and other periodicals of interstate circulation—

Represented that its product was benchmade, or made strictly by hand, from woolen materials which were exclusive to it and could not be obtained elsewhere;

Facts being that it was not so made, and men's clothing manufactured from identical woolens could be purchased from other dealers;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such misrepresentations were true, because of which it purchased said product:

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

Mr. 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 The Leonard Custom Tailors Co., a corporation, also trading as Leonard Custom Tailors Co., as Leonard Custom Tailors, and as Avon Park Clothes, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint in that respect as follows:

PARAGRAPH 1. Respondent, The Leonard Custom Tailors Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its office and principal place of business in the Textile Building, Cincinnati, Ohio. Respondent is now and for some time last past has been engaged in the manufacture, sale, and distribution of men's clothes, under its corporate name and under the trade names Leonard Custom Tailors Co., Leonard Custom Tailors and Avon Park Clothes.

PAR. 2. In the course and conduct of its said business respondent, in its own name, or one of its aforesaid trade names, has transported

its said product, or caused the same to be transported, when sold, 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 maintains, and at all times mentioned herein has maintained, a course of trade in its said product, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business respondent has misleadingly and falsely represented that its said product is handmade from woolens obtainable exclusively from respondent, such false representations being made through the use of statements and advertisements appearing in pamphlets, newspapers, magazines, and other periodicals sent through the United States mails and having interstate circulation. Among and typical of the said false, misleading, and deceptive statements and representations are the following:

America's foremost direct-to-consumer Leonard custom tailoring, Made-To-Measure, Exclusive Woolens, bench-made quality, \$31.75 to \$39.75. Also Deluxe Imported Fabrics, \$44.75 up to \$59.75. American selling rights confined to us.

Greatest Opportunity Offering America's foremost direct-to-consumer Leonard custom tailoring Made-To-Measure. \$29.75 to \$39.75 Exclusive Leonard woolens, same quality bench-made clothes always featured by Leonard.

Leonard alone features exclusive imported fabrics from the choice looms of Europe and selected domestics from the finest American mills.

* * * your assurance of real bench-made quality in the precise manner of the fine custom tailor.

† Exclusive Leonard woolens. American selling rights confined to us.

PAR. 4. By means of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, the respondent has represented, directly or by implication, that its men's clothes are bench-made, or made strictly by hand, from woolen materials which are exclusive to respondent and cannot be obtained elsewhere.

PAR. 5. Such statements and representations are false, misleading, and deceptive. In truth and in fact respondent's clothes are not bench-made, or made strictly by hand, and the woolen materials from which said clothing is made are not peculiar to or exclusive to respondent, but men's clothes manufactured from identically the same woolens can be purchased in the United States from dealers other than respondent.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations as herein set forth 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 said statements and representations are true, and because of said erroneous and mistaken belief a substantial number of the purchasing public has purchased and is purchasing respondent's said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 2, 1942, issued and thereafter served its complaint in this proceeding upon the respondent, The Leonard Custom Tailors Co., a corporation, also trading as Leonard Custom Tailors Co., as Leonard Custom Tailors and as Avon Park Clothes, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 26, 1942, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public; and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Leonard Custom Tailors Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its office and principal place of business in the Textile Building, Cincinnati, Ohio. Respondent is now and for some time last past has been engaged in the manufacture, sale, and distribution of men's clothes, under its corporate name and under the trade names Leonard Custom Tailors Co., Leonard Custom Tailors, and Avon Park Clothes.

PAR. 2. In the course and conduct of its said business, respondent, in its own name or one of its aforesaid trade names, has transported its said product, or caused the same to be transported, when sold, 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 maintains, and at all times mentioned herein has maintained, a course of trade in its said product, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has misleadingly and falsely represented that its said product is handmade from woolens obtainable exclusively from respondent, such false representations being made through the use of statements and advertisements appearing in pamphlets, newspapers, magazines, and other periodicals sent through the United States mails and having interstate circulation. Among and typical of the said false, misleading, and deceptive statements and representations are the following:

America's foremost direct-to-consumer Leonard custom tailoring, Made-to-Measure, Exclusive Woolens, bench-made quality \$31.75 to \$39.75. Also Deluxe Imported Fabrics, \$44.75 up to \$59.75. American selling rights confined to us.

Greatest Opportunity Offering America's foremost direct-to-consumer Leonard custom tailoring Made-To-Measure. \$29.75 to \$39.75 Exclusive Leonard woolens, same quality bench-made clothes always featured by Leonard.

Leonard alone features exclusive imported fabrics from the choice looms of Europe and selected domestics from the finest American mills.

* * * your assurance of real bench-made quality in the precise manner of the fine custom tailor.

Exclusive Leonard woolens. American selling rights confined to us.

PAR. 4. By means of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, the respondent has represented, directly or by implication, that its men's clothes are bench-made, or strictly by hand, from woolen materials which are exclusive to respondent and cannot be obtained elsewhere.

PAR. 5. Such statements and representations are false, misleading, and deceptive. In truth and in fact respondent's clothes are not bench-made, or made strictly by hand, and the woolen materials from which said clothing is made are not peculiar to or exclusive to respondent, but men's clothes manufactured from identically the same woolens can be purchased in the United States from dealers other than respondent.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations as herein set forth has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and because of said erroneous and mistaken belief a substan-

105

Order

tial number of the purchasing public has purchased and is purchasing respondent's said product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, The Leonard Custom Tailors Co., a corporation, also trading as Leonard Custom Tailors Co., as Leonard Custom Tailors, and as Avon Park Clothes, or trading under any other name or names, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of men's clothes in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that its men's clothes are bench-made or hand-made.

2. Representing that the woolen materials from which respondent's men's clothing is made are exclusive to respondent or that respondent is the only dealer from whom clothes manufactured from the same materials can be purchased.

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
HOLLYWOOD MAGIC GARMENT CO.

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

Docket 4702. Complaint, Feb. 5, 1942—Decision, Jan. 19, 1943

Where a corporation, engaged in interstate sale and distribution of its so-called "Hollywood Magic Garment" for removal of excess flesh, made of rubberized cloth and fitted tightly about the neck, wrists, and ankles—or the thighs in the event a shorter garment was desired—to induce perspiration; by means of advertisements disseminated through the mails, and by various other means, directly or by implication—

Represented that use of its device constituted an effective means for removing excess weight or flesh, and that it might be used with entire safety, through such statements, among others, as "LOSE A POUND A DAY"; "TAKE INCHES OFF!"; "MELT POUNDS AWAY"; "* * * lose as much as a pound a day safely, leisurely"; etc;

The facts being that the reduction in weight brought about through perspiration induced by the increased body temperature and inability of perspiration to escape, with further increase of temperature and further loss by the body of water and salt, was only temporary, due to marked thirst and consumption of water or other liquids thereby induced, and resulting substantial restoration of weight; the only method recognized by medical science, as established by expert testimony, for effective reduction of weight in the usual case is curtailment of the food intake, particularly as to fats and carbohydrates; use of such devices is, accordingly, regarded as wholly ineffective, is not safe in all cases, especially of elderly and over-fat persons, and never in presence of any serious pathological condition and especially heart disease;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public with respect to properties and safety of said device, and causing its purchase thereof 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.

As respects the offer and sale of tight fitting rubber garments as a means for reducing excess flesh through the perspiration and temporary reduction in weight thus brought about, expert testimony established that the only method recognized by medical science as effective for the reduction of weight in the usual or ordinary case is curtailment of the food intake, particularly as to fats and carbohydrates; and that the use of such devices is regarded as wholly ineffective for obtaining any permanent reduction in weight, since they have no substantial effect upon accumulated fatty tissues.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Ben Locker (Assignee), of Los Angeles, Calif., and *Mrs. Margaret G. Zeman*, of Hollywood, Calif., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Hollywood Magic Garment Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1019 North Las Palmas Avenue, Hollywood District, in the city of Los Angeles, State of California.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of selling and distributing a garment device made of rubberized cloth designated as "Hollywood Magic Garment," and designed to be a weight reducing device, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said device when sold to be transported from its place of business in Los Angeles, Calif., to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and has caused the dissemination of false advertisements concerning its said device 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 has caused the dissemination of, false advertisements concerning its said device by various means for the purpose of inducing or which is 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 and representations contained in said false advertisements dis-

Complaint

36 F. T. C.

seminated and caused to be disseminated, as hereinabove set forth, are the following:

Lose a pound a day!
No diets, drugs, baths
Take inches off!
Melt pounds away! * * * as you work or play
* * * * *

Hollywood
MAGIC GARMENTS

Smart comfortable slacksuits for Men and Women. Actually worn by many stars to keep slim and fit. Results Seen After First Wearing! Sent anywhere in U. S. A.,

Prepaid, only \$15,
Or write for free booklet.

State size worn.

Hollywood Magic Garment Co
1019 North Las Palmas,
Hollywood, California.

No more dieting or exercising!

REDUCE BY MAGIC

—via Hollywood Magic Garment

Relax, read a book, whatever you like—and lose as much as a pound a day, safely, leisurely? Just wear the soft, comfortable Hollywood Magic Garment one to two hours a day—modern method of scientific reducing. Approved by several physicians.

\$15

Corset Salon—Third Floor
THE MAY COMPANY
Broadway, Eighth & Hill

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented and does now represent, directly and by inference, that the wearing or use of said device designated as "Hollywood Magic Garment" will reduce weight, fat, and flesh without the necessity of dieting, exercising, taking of baths, or the taking of drugs; that the wearing of said device will reduce weight, fat, and flesh as rapidly as a pound a day; that the method of using said device for weight, fat, and flesh reduction is a modern and scientific method of reducing; and that said device may be worn for weight reduction purposes with safety.

PAR. 5. In truth and in fact, the statements and representations hereinabove set forth and others similar thereto not specifically set out herein are grossly exaggerated, false, and misleading.

The use or the wearing of the respondent's device will not reduce the body's fat or flesh, and the method of using said device for weight, fat and flesh reduction is not a scientific or proper method of reducing. Furthermore, said device may not be worn for weight reduction purposes with entire safety. The wearing of said device when exercising or in hot weather may cause the body's temperature to be raised to such a point as to produce a heat stroke or heat exhaustion.

Although the wearing of said device may, by producing an excessive sweat, cause a partial dehydration of the body, thereby producing a temporary loss in the body's weight, such loss of weight will normally be rapidly regained by the normal consumption of liquids.

Furthermore, said device is of no substantial value as a weight, fat, or flesh reducing device and is of no substantial value as an adjunct to a weight, fat, or flesh reducing regime.

PAR. 6. Respondent, by the use of the foregoing false and misleading representations, has had and now has the capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said device when worn is an effective weight reducer, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's device.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 5, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Hollywood Magic Garment 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. No answer was filed by respondent, but 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 respondent and oral argument not hav-

ing 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, Hollywood Magic Garment Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, its principal office and place of business having formerly been located at 1019 North Las Palmas Avenue, Los Angeles, Calif. It was formerly engaged in the sale and distribution of a garment device made of rubberized cloth, the device being designated by respondent as "Hollywood Magic Garment" and being intended for use in the removal of excess weight or flesh from the human body. While the corporation has not been formally dissolved, it discontinued active business operations in October 1941. The last known address of the corporation was 8254 Beverly Boulevard, Los Angeles, Calif.

PAR. 2. During the course of its business operations, which covered a period of some four years prior to October 1941, respondent caused its product, when sold, to be transported from its place of business in Los Angeles, Calif., 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 course and conduct of its business and for the purpose of inducing the purchase of its product, respondent has disseminated and has caused the dissemination of advertisements concerning its product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and has caused the dissemination of advertisements concerning its product by various means for the purpose of inducing or which were likely to induce, directly or indirectly, the purchase of its product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in respondent's advertisements were the following:

110

Findings

LOSE A POUND A DAY! . . .

No Diet, Drugs, Baths.

TAKE INCHES OFF!

MELT POUNDS

AWAY! . . . as you

work or play!

Hollywood

State

MAGIC GARMENTS

Size

Wanted

Smart, comfortable slack suits, for *Men* or *Women*. Actually worn by many stars to keep slim and fit. *Results Seen After First Wearing!* Sent anywhere in U. S. A. prepaid, only \$15. Or Write for Free Booklet.

LOSE A POUND A DAY WHILE YOU WORK OR PLAY!

Hollywood MAGIC GARMENTS

NO DIETING—IT'S FUN TO REDUCE

Hollywood Magic Garments have proved to be *sensational* by helping to regain normal, slim, alluring lines. Used consistently, there is no need of a special diet. You simply slip into this smart, comfortable garment, work, play or exercise for an hour and a half or two hours, slip it off, follow with a cold shower and a brisk rubdown and you'll usually find you are at least a pound lighter than when first you donned it.

• • • • • • •

MELT YOUR POUNDS AWAY

**** NOW * * * You can "melt your pounds away" without discomfort or any effort beyond your normal routine of living, in your own home or at play, with these new, unusual Hollywood Magic Garments!

* * * All types of men from all walks of life . . . busy executives to day laborers . . . can usually lose as much as a pound a day by the regular and consistent use of their Hollywood Magic Garments. * * * (Com. Ex. No. 2.)

No more dieting or exercising!

REDUCE BY MAGIC

—via Hollywood Magic Garment

Relax, read a book, whatever you like—and lose as much as a pound a day, safely, leisurely! Just wear the soft, comfortable Hollywood Magic Garment one to two hours a day—modern method of scientific reducing. Approved by several physicians. (Com. Ex. No. 9-a)

PAR. 4. Through the use of these statements and representations and others of a similar nature, respondent has represented, directly or by implication, that the use of its device constitutes an effective means and method for the removal of excess flesh or weight from the human body, and that the device may be used with entire safety.

PAR. 5. Respondent's device is a garment made of rubberized cloth which fits tightly about the neck and wrists, and also about the ankles (or the thigh, in the event a shorter type of garment is

desired). The purpose of the garment is to induce perspiration. The garment increases the temperature of the body, thus inducing perspiration, and the inability of the perspiration to evaporate and escape from the body has the effect of further increasing the body temperature and inducing additional perspiration. As a result of this process the body is caused to lose substantial quantities of water and sodium chloride or salt, and there is a consequent reduction in the weight of the body. The effect, however, is only temporary, as the loss of the water induces marked thirst and the user must proceed almost immediately to drink a substantial quantity of water or other liquids. The water previously lost from the body through perspiration is thus replaced, and the weight of the body remains about as it was before the process was begun.

The expert testimony in the record establishes that the only method recognized by medical science as effective for the reduction of body weight, in the usual or ordinary case, is the curtailment of the food intake, particularly as to fats and carbohydrates. The use of devices such as respondent's is regarded as wholly ineffective insofar as obtaining any permanent reduction in weight is concerned, as such devices have no substantial effect upon accumulated fatty tissues.

Moreover, the device cannot properly be regarded as safe for use in all cases. Its use may result in raising the temperature of the body to such a point that heat exhaustion will follow, this being particularly true in the case of elderly persons and those who are overweight. The device should never be used in the presence of any serious pathological condition, especially in the case of heart disease, where the debilitating effect of the loss of fluid and salt from the body would be distinctly detrimental.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to its device, as set forth in paragraphs 3 and 4 hereof, were misleading and deceptive and constituted false advertisements.

PAR. 7. The Commission finds further that the use by respondent of these false advertisements had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties and safety of respondent's device, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such 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 (no answer having been filed by respondent), 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 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, Hollywood Magic Garment 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 device designated "Hollywood Magic Garment," or any other device of substantially similar nature or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that respondent's device constitutes an effective means or method for the removal of excess flesh or weight from the human body, or that said device is in all cases safe for use.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's device, 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
ARTHUR H. FERBER, TRADING AND DOING BUSINESS
AS THE FERBO CO.

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

Docket 4706. Complaint, Feb. 10, 1942—Decision, Jan. 19, 1943

Where an individual, engaged in the manufacture and interstate sale and distribution of various food products, including his "French Tang Vanilla Flavor" and "Sun-Cu-Nilla," which latter was essentially a concentrate of the former; by means of advertisements in newspapers and periodicals, and by radio continuities, circulars, leaflets, and other advertising literature—

Represented and implied that his said product was genuine vanilla extract or flavoring, markedly preferred by the public over synthetic or substitute products, through unqualified use of word "Vanilla" and terms "Vanilla Flavor" and "Vanilla Flavoring" as applied thereto;

The facts being chief flavoring ingredient thereof was vanillin, made from eugenol (derived from oil of cloves), and it contained practically no genuine vanilla;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its said product was one in which the sole flavoring ingredient was genuine vanilla extract, and not "Imitation Vanilla", as usually designated by manufacturers of the genuine "Vanilla", "Vanilla Flavor" and "Vanilla Flavoring", and as a result of such mistaken belief to cause it to purchase substantial quantities of his said product:

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

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

Mr. D. E. Hoopingarner and *Mr. S. F. Rose* for the Commission.
Shaffer & Pierson, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Arthur H. Ferber, an individual, trading and doing business as The Ferbo 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, Arthur H. Ferber, is an individual, trading and doing business as The Ferbo Co., with his principal office and place of business located at 100 King's Road, Madison, N. J.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of various food products including a product for the flavoring of foods, designated as "French Tang" and "Sun-Cu-Nilla." Respondent has caused, and is now causing, said product, when sold, to be transported from his place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by radio continuities, and by circulars, leaflets, and other advertising literature, are the following:

Mrs. Housewife: Have you ever longed for some really fine Vanilla Flavor? Try French Tang.

French Tang Vanilla Flavor.

Vanilla Flavor at its best.

You can't buy this French Tang Vanilla in stores.

French Tang Vanilla Flavor, "Sun-Cu-Nilla."

One pint of Vanilla Flavor for only 50¢.

PAR. 4. For a great many years the purchasing public has understood and believed that a flavoring compound designated and described as vanilla or vanilla flavor is a product in which the flavoring ingredient is derived from the bean or capsule of the vanilla plant, and when

purchasing a flavoring compound, advertised as vanilla or vanilla flavor, the purchasing public understands and believes that the sole flavoring ingredient therein is the extract of the vanilla bean or capsule. The respondent's product, while containing a small amount of the extract from the vanilla bean or capsule, is composed largely, insofar as the flavoring ingredients are concerned, of synthetic products and natural products other than the vanilla bean or capsule.

The purchasing public has a marked preference for genuine vanilla flavoring or extract over a product made from synthetic or substitute ingredients.

PAR. 5. The advertisements disseminated by respondent, as aforesaid, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and that they fail to reveal that the flavoring ingredients of respondent's product are synthetic products and natural products other than the extract of the vanilla bean or capsule and that said product is an imitation vanilla flavoring.

PAR. 6. The use by respondent of said false advertisements has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's product is genuine vanilla flavoring or genuine vanilla extract derived from the bean or capsule of the vanilla plant when such is not the fact. As the result of such erroneous and mistaken belief, so engendered, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 10, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Arthur H. Ferber, an individual, trading and doing business as The Ferbo 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, 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 there-

tofore 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, Arthur H. Ferber, is an individual, trading and doing business as The Ferbo Co., with his principal office and place of business located at 100 King's Road, Madison, N. J. Respondent is now and for a number of years last past has been engaged in the manufacture and in the sale and distribution of various food products, including a product designated as "French Tang Vanilla Flavor" and as "Sun-Cu-Nilla," designed for the flavoring of food.

PAR. 2. Respondent causes and has caused his product, when sold, to be transported from his place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his product, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of advertisements concerning his product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in respondent's advertisements disseminated and caused to be disseminated as herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by

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

MRS. HOUSEWIFE: HAVE YOU EVER LONGED FOR SOME <i>Really Fine</i>	
VANILLA FLAVOR? TRY <i>French Tang</i>	(Com. Ex. No. 4)
<i>French Tang</i> VANILLA FLAVOR	(Com. Ex. No. 2)
VANILLA FLAVOR At Its BEST	(Com. Ex. No. 11)
French Tang Vanilla Flavoring "SUN-CU-NILLA"	(Com. Ex. No. 8)

PAR. 4. For many years the purchasing public has understood and believed that a flavoring product designated and described as "Vanilla," "Vanilla Flavor," or "Vanilla Flavoring" is a product in which the sole flavoring ingredient is genuine vanilla, that is, the extract derived from the bean of the vanilla plant. There is a marked preference on the part of the public for genuine vanilla flavoring or extract over products made from synthetic or substitute ingredients.

PAR. 5. The principal ingredients of respondent's product, French Tang Vanilla Flavor, are: Essence of American grown figs, commercial vanillin made from eugenol (derived from oil of cloves), coumarin, burned sugar or caramel, alcohol, and water. The chief flavoring ingredient is the vanillin. The product contains practically no genuine vanilla, that is, extract obtained from the vanilla bean. Respondent's Sun-Cu-Nilla is essentially the same as the French Tang, except that it is sold in the form of a concentrate rather than as a liquid. Persons purchasing the Sun-Cu-Nilla must add a certain quantity of water to it in order to produce the flavoring compound.

PAR. 6: There are a number of manufacturers of vanilla flavoring products in the United States who use as the sole flavoring ingredient in their products the extract of the vanilla bean. Products so made are known generally in the trade as "Vanilla," "Vanilla Extract," "Extract of Vanilla," "Vanilla Flavor," and "Vanilla Flavoring." Some of these manufacturers also make and sell flavoring compounds such as that sold by respondent, but such products are referred to in the trade and usually designated by the manufacturer as "Imitation Vanilla," and clearly distinguished from the genuine vanilla product.

PAR. 7. The Commission therefore finds that the unqualified terms "Vanilla Flavor" and "Vanilla Flavoring," as used by respondent to designate and describe his product, are misleading and deceptive in that they represent and imply that respondent's product is genuine vanilla extract or flavoring rather than an imitation vanilla flavoring made from synthetic or substitute ingredients; and that respondent's advertisements constitute false advertisements in that they contain such misleading and deceptive representations, and for the further reason that they fail to disclose affirmatively the true nature of respondent's product.

PAR. 8. The Commission further finds that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's product is one in which the sole flavoring ingredient is genuine vanilla extract from the vanilla bean, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's 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 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, Arthur H. Ferber, individually, and trading as The Ferbo 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 food flavoring product designated as "French Tang Vanilla Flavor" and as "Sun-Cu-Nilla," 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 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) uses the term "Vanilla," "Vanilla Flavor," or "Vanilla Flavoring," or any other term of similar import, to designate or describe

Order

36 F. T. C.

respondent's product, unless such term is immediately preceded by the word "Imitation" in equally conspicuous type; or

(b) represents in any manner or by any means that respondent's product is genuine vanilla extract or flavoring.

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 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.

Compl'snt

IN THE MATTER OF
MONO SERVICE COMPANY

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

Docket 4834. Complaint, Sept. 16, 1942—Decision, Jan. 19, 1943

Where a corporation, engaged in the manufacture of paper cups, and in the competitive interstate sale and distribution thereof, including certain ice cream cups, lids of some of which, bearing star on inside thereof, entitled chance ice cream purchaser securing a cup enclosed therewith to extra cup—
Sold its said cups and lids so marked to wholesalers, jobbers, and ice cream manufacturers who resold them, so packed, to retailers for sale to the purchasing public in accordance with aforesaid sales plan, involving game or sale of chance to procure additional cup for original purchase money, and use of a lottery scheme or game of chance in distribution of ice cream to consuming public; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries, contrary to an established public policy of the United States Government, and in competition with many who do not use any such plan or method;

With the result that many dealers and ultimate purchasers of ice cream were attracted by its said sales plan and the element of chance involved therein, and were induced thereby to buy and sell its merchandise in preference to that of its competitors aforesaid; and with tendency and capacity to divert trade in commerce unfairly to it from them:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of 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 Mono Service 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mono Service Co., is a corporation, organized and operating under the laws of the State of New Jersey with its principal office and place of business located at 349 Oraton Street, Newark, N. J. Respondent is now and for sometime last past has been engaged in the manufacture of paper cups including cups

for the packing of ice cream and in the sale and distribution thereof to dealers, jobbers, and ice cream manufacturers in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said cups when sold to be transported from its aforesaid place of business in Newark, N. J., to purchasers thereof at their respective points of location in the various States of the United States other than the State of New Jersey and in the District of Columbia. There is now and has been for sometime last past a course of trade by respondent in said paper cups in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is now and has been in competition with other corporations and with individuals 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 its business as described in paragraph 1 hereof, respondent manufactures and sells, and has manufactured and sold and distributed, to ice cream manufacturers and dealers certain of its ice cream cups so printed, packed, and assembled as to involve the use of a lottery scheme or game of chance when used by retail dealers to distribute ice cream to the purchasing and consuming public.

Respondent's methods of printing and packing its ice cream cups are as follows:

Its cups are packed with an unattached lid for each cup. Some of the said lids have printed on the reverse side thereof a "star." Its cups are sold to manufacturers or packagers of ice cream who fill the cup with ice cream and affix the lids. Retail dealers, and others, who sell ice cream packed in respondent's cups award an extra cup of ice cream to the purchaser of a cup of ice cream having a star appearing under the lid. The consuming purchaser is unable to determine whether the ice cream cup has a star appearing under the lid until after the cup has been purchased and the lid removed; whether a purchaser of the ice cream will receive an additional cup of ice cream for his original purchase money is therefore decided wholly by lot or chance.

Respondent has printed and packed and distributed other ice cream cups to be used as a means of conducting lotteries or games of chance which vary in detail but are the same in principle as those above described.

PAR. 3. The wholesale dealers and jobbers and ice cream manufacturers to whom respondent sells the above described ice cream cups,

the lids of which are marked with a star, resell said cups as packed by respondent to retail dealers and said retail dealers sell and distribute said cups to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products and ice cream in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale and distribution of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of said ice cream cups to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional cup of ice cream. Many individuals, firms, and corporations who manufacture, sell or distribute merchandise in competition with the respondent, as above alleged, do not use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many dealers and ultimate purchasers of ice cream cups are attracted by respondent's said method and sales plan and by the element of chance involved therein and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or method by respondent because of said game of chance has the tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent sales plans or methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Commission on September 16, 1942, issued, and thereafter served, its complaint in this proceeding upon respondent, Mono Service Co., a corporation, charging it with the use of unfair methods in competition in commerce and unfair acts and practices in commerce in violation of the provisions of said act. On September 29, 1942, the re-

spondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and answer thereto; and the Commission, having duly considered this matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mono Service Co., is a corporation, organized and operating under the laws of the State of New Jersey with its principal office and place of business located at 349 Oraton Street, Newark, N. J. Respondent is now and for sometime last past has been engaged in the manufacture of paper cups including cups for the packing of ice cream and in the sale and distribution thereof to dealers, jobbers and ice cream manufacturers in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said cups when sold to be transported from its aforesaid place of business in Newark, N. J., to purchasers thereof at their respective points of location in the various States of the United States other than the State of New Jersey and in the District of Columbia. There is now and has been for sometime last past a course of trade by respondent in said paper cups in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is now and has been in competition with other corporations and with individuals 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 its business as described in paragraph 1 hereof, respondent manufactures and sells, and has manufactured and sold and distributed, to ice cream manufacturers and dealers certain of its ice cream cups so printed, packed, and assembled as to involve the use of a lottery scheme or game of chance when used by retail dealers to distribute ice cream to the purchasing and consuming public.

Respondent's methods of printing and packing its ice cream cups are as follows:

Its cups are packed with an unattached lid for each cup. Some of the said lids have printed on the reverse side thereof a "star."

Its cups are sold to manufacturers or packagers of ice cream who fill the cup with ice cream and affix the lids. Retail dealers, and others, who sell ice cream packed in respondent's cups award an extra cup of ice cream to the purchaser of a cup of ice cream having a star appearing under the lid. The consuming purchaser is unable to determine whether the ice cream cup has a star appearing under the lid until after the cup has been purchased and the lid removed; whether a purchaser of the ice cream will receive an additional cup of ice cream for his original purchase money is therefore decided wholly by lot or chance.

Respondent has printed and packed and distributed other ice cream cups to be used as a means of conducting lotteries or games of chance which vary in detail but are the same in principle as those above described.

PAR. 3. The wholesale dealers and jobbers and ice cream manufacturers to whom respondent sells the above described ice cream cups, the lids of which are marked with a star, resell said cups as packed by respondent to retail dealers and said retail dealers sell and distribute said cups to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products and ice cream in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale and distribution of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of said ice cream cups to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an additional cup of ice cream. Many individuals, firms, and corporations who manufacture, sell, or distribute merchandise in competition with the respondent, as above found, do not use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many dealers and ultimate purchasers of ice cream cups are attracted by respondent's said method and sales plan and by the element of chance involved therein and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or method by respondent because of said game of chance has the tendency

and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent sales plans or methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Mono Service 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 ice cream cups or other similar containers in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing to jobbers or wholesale dealers or to retail dealers direct, ice cream cups, or other similar containers, so printed or assembled that sales of ice cream or other merchandise to the general public, when packed in said cups or other similar containers, are to be made or, due to the manner in which such cups or other similar containers are printed and assembled at the time they are sold by respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Packing or assembling cup lids in packages or assortments of ice cream cups or other similar containers for sale with ice cream or other merchandise to the public at retail, which cup lids are printed for use, or which may be used, in distributing or selling ice cream cups or other similar containers together with ice cream or other merchandise by means of a lottery scheme, game of chance, or gift enterprise.

3. Furnishing to retail or wholesale dealers or jobbers, cup lids or containers, some of which are so printed as to be used in distributing extra cups or containers of ice cream or other merchandise to purchasers of cups or containers containing ice cream or other merchandise when the distribution of such extra cups or containers is determined by lot or chance.

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

IN THE MATTER OF
HAROLD M. MAY, DOING BUSINESS AS UNITED INHERITANCE BUREAU AND GUARDIAN SERVICE BUREAU

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4874. Complaint, Dec. 3, 1942—Decision, Jan. 19, 1943

Where an individual, engaged in interstate sale and distribution of envelopes and questionnaire forms designed to be used by creditors and collection agencies in obtaining information concerning debtors, which bore the trade name, United Inheritance Bureau, and address of said individual, and which contained such statements as "Real Estate Title and Mortgage Reports," "Unclaimed Assets Recovered," "Affiliations in the Principal Cities of the United States, Canada, and Correspondents in Europe," "Genealogical Analysis," "Estate Researching," and statement that the Bureau was "endeavoring to contact a person bearing your name" and that in order for it "to make further progress" recipient was asked to supply certain information, including his name, address, and previous address, and names of his present and former employers and banks;

Making use of a plan under which said questionnaires were (1) assigned a code number identifying the customer involved, (2) had inserted the names and addresses of the debtors or others, from whom information was sought for said customer, (3) were signed by the customer, usually with some fictitious name, (4) were placed in stamped envelopes addressed to debtors or other persons, (5) had enclosed a reply envelope addressed to the trade name and place of business of aforesaid individual, and (6) were delivered, stamped, and with said enclosure, by the customer to said individual, who mailed them at his city, and who was further compensated by an additional fee of 50 cents for replies thus secured which gave such information as the debtor's current address and disclosed that he was employed and the name of his employer—

- (a) Falsely represented, and placed in the hands of his customers the means of falsely representing through said letters and envelopes, directly and by implication, to customers' debtors and others from whom information concerning debtors was sought, that the "United Inheritance Bureau" had affiliations in the principal States of the United States and Canada, and correspondents in Europe;
- (b) Falsely represented, etc., as above set forth, that said "Bureau" was engaged in genealogical research, examined real estate titles, was engaged in locating heirs to estates or interests therein, and was in a position to advise persons of their ownership of assets of which they were unaware; and
- (c) Falsely represented, etc., as above set forth, that the persons concerning whom information was sought had, or might have had, interests in estates or land or other property which might be of financial benefit to them;

When in fact, as above set out, said various representations were false, and sole purpose of said questionnaires and letters was to secure information concerning debtors of his customers in aid of the collection of alleged delinquent accounts; and

132

Complaint

(d) Represented, through use of said name "United Inheritance Bureau," directly and by implication, that his business bore some relation to estates, and to the rights and interests of heirs therein;

When in fact he had nothing to do with such matters, and name employed was merely a disguise for the true nature of the business;

With effect of misleading and deceiving many persons to whom such letters were sent into the mistaken belief that such representations were true, and that name "United Inheritance Bureau" truthfully indicated character of concern making the inquiry, and, by reason thereof, into giving information which they would not otherwise have supplied:

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. Randolph W. Branch for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, and the Federal Trade Commission, having reason to believe that Harold M. May, an individual, trading under the names United Inheritance Bureau and Guardian Service Bureau, 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, Harold M. May, is an individual, trading under the names United Inheritance Bureau and Guardian Service Bureau, with an office and principal place of business at 1278 Jefferson Avenue, Buffalo, N. Y.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing envelopes and form letters in the nature of questionnaires designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent causes said envelopes and letters to be transported from his aforesaid place of business in the State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia.

Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said envelopes and form letters in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said form letters sold and distributed by the respondent are in the forms exemplified by copies thereof marked Exhibit A and

B, attached hereto, and by this reference incorporated herein and made a part hereof.¹

Respondent assigns to each of his customers a code number which identifies the customers to him. Said customers insert in the appropriate spaces in the form letters as exemplified by Exhibit A and B, the names and addresses of debtors or others from whom information is sought, and their code numbers, and cause them to be signed, usually with fictitious names. The letters are then placed in stamped envelopes addressed to the debtors, or such other persons, which bear in the upper left corners:

United Inheritance Bureau
Ferkel Building,
1278 Jefferson Avenue
Buffalo, New York.

together with a reply envelope addressed as above. Such reply envelopes are stamped by respondent's customers. Said customers thereafter cause the stamped envelopes and enclosures to be delivered to respondent at his place of business in Buffalo, N. Y., who in turn deposits them in the United States mails at Buffalo, N. Y., for delivery to the various addressees.

Such replies as are returned to respondent are received by him, the customers identified by the code numbers and the enclosures sent to the appropriate customers. For each reply which gives the current address of the debtor and discloses that he is employed and the name of his employer, an additional fee of 50 cents is charged to the customer by the respondent.

PAR. 4. By the means of the aforesaid letters and envelopes respondent has falsely represented, and placed in the hands of his customers means of falsely representing directly and my implication, to customers' debtors and to others from whom information concerning such debtors is sought, that United Inheritance Bureau has affiliations in the principal States of the United States and Canada and correspondents in Europe; is engaged in genealogical research; examines real estate titles; is engaged in the business of locating heirs to estates or interests therein; is in a position to advise persons of their ownership of assets of which such persons are unaware and that the persons concerning whom information is sought have or may have interests in estates or land or other property which may be of financial benefit to them.

PAR. 5. Said representations are false, deceptive, and misleading. In truth and in fact, respondent, in conducting the business aforesaid, does not have affiliations in the principal States of the United States and Canada, nor correspondents in Europe. He is not engaged in

¹ Exhibits published in the findings at p. 138.

genealogical research nor does he examine titles to real estate. He is not engaged in the business of locating heirs to estate or interests therein. He is not in a position to advise persons of their ownership of assets of which such persons are unaware. He has no knowledge of any interests in estates or lands or other property to which the persons concerning whom information is sought may be entitled, and is not in position to furnish such persons with information that may be of financial benefit to them. On the contrary the sole purpose of said questionnaire letters is to secure the addresses, names of employers and other information concerning debtors of his customers in aid of collection of alleged delinquent accounts.

PAR. 6. Through the use of the name "United Inheritance Bureau" respondent has represented, directly and by implication, that his said business bears some relation to estates and to the rights and interests of heirs thereof.

In truth and in fact, respondent in conducting the business of "United Inheritance Bureau" has nothing whatever to do with estates or the rights or interests of persons therein, and the said name is merely a disguise for the true nature of the business.

PAR. 7. The use as hereinabove set forth of the foregoing false and misleading statements, representations, and designations, has had the capacity and tendency to, and has, misled and deceived many persons to whom said letters were sent into the erroneous and mistaken belief that said statements and representations were true and that the name "United Inheritance Bureau," truthfully indicated and described the character of the concern making the inquiry and requesting the information and by reason thereof to give information which they would not otherwise supply.

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 December 3, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Harold M. May, an individual, trading under the names United Inheritance Bureau and Guardian Service Bureau, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On December 16, 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, Harold M. May, is an individual, trading under the names United Inheritance Bureau and Guardian Service Bureau, with an office and principal place of business at 1278 Jefferson Avenue, Buffalo, N. Y. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing envelopes and form letters in the nature of questionnaires designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

PAR. 2. Respondent causes his envelopes and letters, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his envelopes and form letters in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The form letters sold and distributed by respondent are in the forms exemplified by copies thereof marked Exhibits A and B, attached hereto and by this reference incorporated herein and made a part hereof.

Respondent assigns to each of his customers a code number which identifies the customer to him. The code number and the names and addresses of debtors or others from whom information is sought are inserted in the appropriate spaces in the form letters by the customer, who causes the letters to be signed, usually with fictitious names. The letters are then placed in stamped envelopes addressed to the debtors or such other persons. In the upper left-hand corner of the envelopes appears the following:

United Inheritance Bureau
Ferkel Building
1278 Jefferson Avenue
Buffalo, New York

Enclosed in each letter is a reply envelope addressed to the United Inheritance Bureau, as set forth above. The postage on such envelopes is supplied by the customer. The customer then causes the stamped envelopes and enclosures to be delivered to respondent at his place of business in Buffalo, N. Y., who in turn deposits them in the United States mails at Buffalo, N. Y., for delivery to the various addresses.

Upon receipt by respondent of the replies to such letters, the customer is identified by the code number and the enclosures are forwarded to the customer. For each reply which gives the current address of the debtor and discloses that he is employed and the name of his employer, an additional fee of fifty cents is charged the customer by respondent.

PAR. 4. By means of these letters and envelopes respondent has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to customers' debtors and to others from whom information concerning such debtors is sought, that United Inheritance Bureau has affiliations in the principal States of the United States and Canada, and correspondents in Europe; is engaged in genealogical research; examines real estate titles; is engaged in the business of locating heirs to estates or interests therein; and is in a position to advise persons of their ownership of assets of which such persons are unaware, and that the persons concerning whom information is sought have or may have interests in estates or land or other property which may be of financial benefit to them.

PAR. 5. These representations are false, deceptive, and misleading. In truth and in fact, respondent, in conducting his business, does not have affiliations in the principal States of the United States or in Canada, or correspondents in Europe. He is not engaged in general-logical research, nor does he examine titles to real estate. He is not engaged in the business of locating heirs to estates or interests therein. He is not in a position to advise persons of their ownership of assets of which such persons are unaware. He has no knowledge of any interests in estates or lands or other property to which the persons concerning whom information is sought may be entitled, and is not in a position to furnish such persons with information that may be of financial benefit to them. On the contrary, the sole purpose of the questionnaire letters is to secure the addresses, names of employers, and other information concerning debtors of his customers in aid of collection of alleged delinquent accounts.

PAR. 6. Through the use of the name "United Inheritance Bureau" respondent has represented, directly and by implication, that his business bears some relation to estates and to the rights and interests of

heirs thereof. In truth and in fact, respondent, in conducting the business of "United Inheritance Bureau," has nothing whatever to do with estates or the rights or interests of persons therein, and the name is merely a disguise for the true nature of the business.

PAR. 7. The use of these false and misleading statements and representations, including the use of the name "United Inheritance Bureau," has had the capacity and tendency to and has misled and deceived many persons to whom such letters were sent into the erroneous and mistaken belief that such statements and representations were true and that the name "United Inheritance Bureau" truthfully indicated and described the character of the concern making the inquiry and requesting the information, and; by reason thereof, into giving information which they would not otherwise have supplied.

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.

EXHIBIT A

Real Estate Title and Mortgage Reports	Unclaimed Assets Recovered Affiliations in the Principal Cities of the United States, Canada, and Correspondents in Europe	Genealogical Analysis Estate Re- searching
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UNITED INHERITANCE BUREAU

Missing and Unknown Heirs Located
Office: Ferkel Building
1278 Jefferson Avenue
Buffalo, N. Y.

Please refer
to file number

To

We are endeavoring to contact a person bearing your name. In order for us to make further progress in our investigation, will you kindly answer the following? This may be of great importance to you.

Full Name.....	Date of Birth and Place.....
Present Residence.....	Name of Father.....
Street	
City	State
Birthplace of Father.....	
Previous Address.....	Nearest Living Relative.....
(Use other side for more)	
City	State
Address	
City	State
Occupation.....	
City	State
If Married, Mate's Name.....	

132

Exhibits

REFERENCES

Your Employer.....	-----	-----	-----	-----
or own business	Firm Name	Street	City	State
Former Employers.....	-----	-----	-----	-----
	Firm Name	Street	City	State
	-----	-----	-----	-----
Name of Your Bank.....	-----	-----	-----	-----
	-----	Street	City	State
	-----	Street	City	State
Personal Description.....	-----			
General Remarks: (Use other side of this blank if necessary).....	-----			

If the above information confirms with our records, other information will be unfolded to you. Use enclosed envelope and a prompt reply will facilitate matters.

Yours truly,

UNITED INHERITANCE BUREAU
Manager, Research Department

Form 200A

EXHIBIT B

Real Estate Title	Unclaimed Assets Recovered	Genealogical
and Mortgage	Affiliations in the Principal	Analysis
Reports	Cities of the United States,	Estate Re-
	Canada, and Correspondents in	searching
	Europe	

UNITED INHERITANCE BUREAU
Missing and Unknown Heirs Located
Office: Ferkel Building
1278 Jefferson Avenue
Buffalo, N. Y.

Please refer
to File Number

To Subject

We have been requested to contact a person bearing name of above subject and our records indicate that you may be able to help us.

Can you give us information as to the present whereabouts of this subject or the name of some one who is acquainted with this subject? It is possible that you can furnish the name and address of a relative.

Please fill in the questions below and mail in the enclosed envelope.

This is a matter of importance to the subject and an early reply will be appreciated.

Yours truly,

UNITED INHERITANCE BUREAU
Manager, Research Department

Full name of subject.....	-----		
Now residing at.....	-----		
	Street	City	State
Employer's name.....	-----		
	Street	City	State
Business name.....	-----		
	Street	City	State
Remarks: (Write on other side of blank if necessary)	-----		

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 he waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Harold M. May, individually, and trading as United Inheritance Bureau and as Guardian Service Bureau, 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 form letters and envelopes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "United Inheritance Bureau," or any other word or words of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent's business bears any relation to estates, or to the rights or interests of heirs therein.

2. Representing, directly or by implication, that respondent has affiliations in the principal States of the United States or Canada, or that respondent has correspondents in Europe.

3. Representing, directly or by implication, that respondent is engaged in genealogical research.

4. Representing, directly or by implication, that respondent's business includes the examination of titles to real estate.

5. Representing, directly or by implication, that respondent's business is that of locating heirs to estates or to interests therein; or that respondent is in a position to advise persons with respect to interests in estates or the ownership of assets; or that persons concerning whom information is sought through respondent's form letters have or may have any interest in estates or any other property.

6. Selling or distributing form letters or envelopes which represent, directly or by implication, that respondent's business is other than that of obtaining information to be used in the collection of debts; or which represent, directly or by implication, that the information sought through such letters is for any purpose other than for use in the collection of debts.

132

Order

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

IN THE MATTER OF

ALFRED KOHLBERG, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4604. Complaint, Oct. 3, 1941—Decision, Jan. 26, 1943

Where a corporation, engaged in interstate sale and distribution of laces and linen goods—

- (a) Represented, through unqualified use of such typical terms and names as "Tuscany," "Binche," "Cluny," "Flat Venise," "Venise Rounds," and "Valenciennes" in its invoices and advertising literature and on labels attached to its products that the lace products to which they were applied were made in certain countries of continental Europe noted for such production, and particularly Belgium, France, and Italy, as long understood by purchasing public when used in aforesaid connection;

The facts being that said products, while resembling the laces made in the lace-producing countries of Europe, markedly preferred by a substantial portion of the purchasing public over those made in China or other countries, were in fact made in China and imported therefrom into the United States by it; and

- (b) Failed to disclose adequately the place of origin of such products through affixing to some of them tags or stickers which bore the legend "Made in China" or "Made in Shantung, China" in much smaller and less conspicuous type than designations above set forth; and, in some cases, particularly as to products sold in bulk, through attaching said tags or stickers insecurely so that they were likely to become separated from the article before its offer for sale at retail by the dealer-purchaser;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and place of origin of said products, thereby causing substantial purchase thereof by reason of such mistaken belief:

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

Before *Mr. John W. Addison* and *Mr. Andrew B. Duvall*, trial examiners.

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 the Alfred Kohlberg, Inc., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a

proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Alfred Kohlberg, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal place of business located at 1 W. Thirty-seventh 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 Chinese textiles, including lace and handkerchiefs. Respondent causes its said products when sold by it to be transported from its aforesaid place of business in the State of New York to the purchasers thereof located in various States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing purchase of its said products, the respondent has adopted and used and now uses the names of countries, provinces, and cities of the lace-producing sections of continental Europe to identify, designate, and describe various laces sold and distributed by it. Said names and designations are used by respondent on invoices, in advertising literature and on labels attached to said products. Among and typical of such names so used are the following: "Tuscany," "Binche," "Cluny," "Flat Venice," "Venise Rounds" and "Valenciennes." Through the use of said names respondent has represented and now represents that its said laces are made respectively in the Tuscany District of Italy; at Binche in Hainault Province, Belgium; Cluny, France; Venice, Italy, and Valenciennes, France.

PAR. 4. The terms "Tuscany," "Binche," "Cluny," "Flat Venice," "Venise Rounds," and "Valenciennes" are understood by the purchasing public to denote hand-made linen laces of distinctive designs and construction originating in and limited to the particular country, province, or city of lace-producing countries of continental Europe bearing said geographical names. For many years such laces bearing such designated names have been and they are now, well and favorably known to the purchasing public and there is a preference on the part of a substantial portion of the purchasing public for such laces over laces made in other countries or machine made laces, or laces made from cotton or other materials.

Findings

36 F. T. C.

In truth and in fact the laces designated by respondent as aforesaid are not made in the Tuscany District of Italy; in Binche, Hainault Province, Belgium; in Cluny, France; in Venice, Italy; or in Valenciennes, France; but on the contrary all of said laces are made in China and they are not made from linen thread, but from cotton or other thread.

PAR. 5. The aforesaid acts and practices of the respondent have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public as to the origin, composition, and quality of respondent's products, and as a result the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's products.

PAR. 6. The acts and practices of the respondent serve also to place in the hands of uninformed and unscrupulous dealers a means or instrumentality whereby such dealers are enabled to mislead and deceive the purchasing public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 3, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Alfred Kohlberg, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by 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, Alfred Kohlberg, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 1 W. Thirty-seventh Street, New York, N. Y. Respondent is now and for a number of years last past has been engaged in the sale and distribution of laces and linen goods.

PAR. 2. Respondent causes and has caused its products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. 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 respondent has used in its invoices and advertising literature, and on labels attached to its products, various names to designate and describe certain of the laces and lace products sold by it. Among and typical of such names so used are the following: "Tuscany," "Binche," "Cluny," "Flat Venise," "Venise Rounds," and "Valenciennes." For many years last past these names, when used in connection with laces, have been understood by the purchasing public as denoting laces made in certain countries of continental Europe noted for the production of laces, particularly Belgium, France, and Italy. The unqualified use of such terms serves as a representation to the public that the laces or lace products to which they are applied were made in such lace-producing section of Europe. There is a marked preference on the part of a substantial portion of the purchasing public for laces having their origin in such section over laces made in China or other countries.

The laces and lace products so designated and described by respondent, while resembling in design and pattern the laces made in the lace-producing countries of Europe, were not in fact made in such countries or in any section of Europe, but were made in China and imported from China into the United States by respondent.

PAR. 4. Some of these products, when sold by respondent, had affixed thereto tags or stickers bearing the legend "Made In China" or "Made in Shantung, China," but such legends were in much smaller and less conspicuous type than the name used by respondent to designate the lace, and would in the usual case escape the notice or attention of prospective purchasers. Moreover, in the case of some of the products, particularly laces sold in bulk, the tags or stickers purporting

Order

36 F. T. C.

to disclose the place of origin were insecurely attached to the article and were likely to become detached and separated therefrom before the article was offered for sale at retail by the dealer purchasing it from respondent.

PAR. 5. The Commission finds that the unqualified use by respondent of names signifying the lace-producing section of Europe to designate and describe laces and lace products not made in such section, and the failure of respondent to disclose adequately the place of origin of such products, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and place of origin of respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous 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 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, Alfred Kohlberg, 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 laces and lace products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Tuscany," "Binche," "Cluny," "Venise," or "Valenciennes," or any other word descriptive or indicative of laces made in the lace-producing countries of Europe, to designate or describe laces or lace products not made in such countries: *Provided*,

142

Order

however, That if the lace involved is of the same type as the lace produced in such countries, such descriptive word may be used if immediately followed by the word "Type," or some other word of similar import, in letters of at least equal size and conspicuousness, and if there also appear in connection with such description other words clearly and conspicuously disclosing the country of origin of such lace, as, for example:

"Tuscany Type
Made in China"

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

HERBERT L. ROSS, DOING BUSINESS AS NATIONAL
INHERITANCE SERVICE; AND O. F. BLAKERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4849. Complaint, Oct. 15, 1942—Decision, Jan. 26, 1943*

Where an individual, engaged in interstate sale and distribution of envelopes and form letters to be used by creditors and collection agencies in obtaining information concerning debtors, which bore his trade name, i. e., "National Inheritance Service," and San Francisco address, and contained such statements as "Examiners for Title Companies," "Searchers of Records," "Genealogists," "Estate Counsellors," "Missing Heirs Located," "Actuaries," and "We have been endeavoring to communicate with a person of the above name (name of person and address) * * *. This is a matter of distinct importance to the individual in question and that we may make certain you are the one, please answer the following questions" (relating to person's name, address, employer, and address, bank references, etc.); and some of which also contained statements designed to follow up similar unanswered communications; aided by a second individual who employed same trade name, with Baltimore address;

Making use of a plan under which said questionnaires were (1) assigned a code number identifying the customer involved; (2) had inserted the names and addresses of the debtors or others from whom customer sought information; (3) were signed by the customer usually with some fictitious name; (4) were placed in stamped envelopes bearing in upper left hand corner aforesaid trade name with either San Francisco or Baltimore address; (5) had enclosed a reply envelope addressed to such trade name and place of business in San Francisco or Baltimore; (6) were mailed or delivered by the customer to said individual who mailed them in San Francisco or delivered them to his associate for mailing in Baltimore, and who received 50 cents from his customers for each debtor's location so obtained; through said letters and envelopes, directly and by implication—

- (a) Falsely represented, and placed in the hands of his customers means of falsely representing, to customers, debtors and others from whom information was sought, that the "National Inheritance Service" had correspondents in all the principal cities of the world;
- (b) Falsely represented, etc., as above set forth, that said "National Inheritance Service" acted as examiner for title insurance companies;
- (c) Falsely represented, etc., that said "Service" engaged in genealogical research, actuarial work, and the searching of records; and
- (d) Falsely represented, etc., that the person concerning whom information was sought had or might have an interest in an estate or land which would be of financial benefit to him;

When in fact said representations were false and misleading, and said individual aforesaid had no knowledge of any such interests in estates or in lands; and

- (e) Falsely represented, through use of name "National Inheritance Service,"

directly and by implication, that his business bore some relation to estates and to the rights and interests of heirs therein;

When in fact he had nothing to do with such matters and name employed was merely a disguise for his true business of obtaining information for use in collection of debts;

With effect of misleading and deceiving many persons to whom such letters were sent into the mistaken belief that such representations were true, and that said trade name truthfully indicated the character of the concern making the inquiry, and by reason thereof, into giving information which they would not otherwise have 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.

Mr. Randolph W. Branch for the Commission.

Mr. James M. Hoffa, of Baltimore, Md., 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 Herbert L. Ross, an individual, trading under the name National Inheritance Service, and O. F. Blaker, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Herbert L. Ross, is an individual, trading under the name National Inheritance Service, with an office and principal place of business at 26 O'Farrell Street, San Francisco, Calif.

Respondent, O. F. Blaker, is an individual, with an office and principal place of business at 4642 York Road, Baltimore, Md.

PAR. 2. Respondent, Herbert L. Ross, is now, and has been for more than 2 years last past, engaged in the business of selling envelopes and form letters designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent Ross causes the said envelopes and letters to be transported from his aforesaid place of business in the State of California to purchasers thereof in various States of the United States and in the District of Columbia. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said articles in commerce between and among the various States of the United States and in the District of Columbia.

In his business of selling and distributing said envelopes and letters, respondent Ross has traded under the name "National Inheritance Service."

Complaint

36 F. T. C.

PAR. 3. The said letters sold and distributed by respondent are in the forms exemplified by copies thereof, marked Exhibits A, B, C, D, E, and F attached hereto, and by this reference incorporated herein and made a part hereof.¹

Exhibits A, B, C, and D, E, F are respectively letters sent to debtors and to those from whom information concerning debtors is sought.

PAR. 4. Each customer of respondent Ross is given a code number which identifies the customer to him.

Said customers insert in the appropriate spaces in the form letters the names and addresses of the debtors or others from whom information is sought, and their code numbers, and cause them to be signed, usually with fictitious names. The letters are then placed in stamped envelopes, addressed to the debtors or such other persons, which bear in the upper left hand corner either:

National Inheritance Service
20 O'Farrell Street
San Francisco, Cal., or
National Inheritance Service
4644 York Road,
Baltimore, Md.

together with a reply envelope addressed, as above, to either San Francisco, Calif., or Baltimore, Md. Such reply envelopes sometimes are, and sometimes are not, stamped by respondents' customers; upon their backs the customers place their code numbers.

Said customers thereafter (1) mail the letters themselves, or (2) cause them to be delivered to respondent, Ross, at San Francisco, Calif., who causes them to be deposited in the United States mail, or (3) causes them to be delivered to respondent, Blaker, at Baltimore, Md., who causes them to be deposited in the United States mail.

Such replies as are returned to respondent, Blaker, at Baltimore, Md., are received by him and transmitted by him to respondent, Ross, at San Francisco, Calif. Such replies, together with those received at the San Francisco office of respondent Ross, are identified, as to Ross' customers, by the code numbers on the envelopes, or on the letters, opened by him, and the results communicated to the appropriate customers. Ross receives 50 cents for each debtor's location thus obtained.

PAR. 5. By means of the aforesaid letters and envelopes respondent, Ross, has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to customers' debtors, and others from whom information concerning such debtors is sought, that "National Inheritance Service" has corre-

¹ Exhibits published in the findings at p. 155.

spondents in all principal cities of the world, acts as counsellor to those in charge of estates, is engaged in the business of locating heirs to estates or to interests therein, acts as examiner for title insurance companies, engages in geneological research, actuarial work, and searches of records, and that the person concerning whom information is sought has or may have an interest in an estate or land which will be of financial benefit to him.

The said representations are false and misleading. In truth and in fact, respondent, Ross, in conducting the business called "National Inheritance Service" does not have correspondents in all the principal cities of the world. He does not act as counsellor to those in charge of estates, and is not engaged in the business of locating heirs to estates or interests therein. He does not make examinations for title insurance companies, or engage in geneological research, actuarial work or searches of records. He has no knowledge of any interests in estates or in lands to which the persons concerning whom information is sought may be entitled.

PAR. 6. Through the use of the name "National Inheritance Service" respondent has represented, directly and by implication, that his said business bears some relation to estates and to the rights and interests of heirs thereof.

Said representation is false and misleading. In truth and in fact, said business has nothing whatever to do with estates or the rights or interests of persons therein, and the said name is merely a disguise for the true nature of the business.

PAR. 7. The participation of respondent, Blaker, aids in the accomplishment of the plan for obtaining the desired information as regards persons from whom information is sought who are located in the general vicinity of San Francisco, and who are, in consequence, able to call in person at respondent, Ross', San Francisco office.

PAR. 8. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations, and designations has had the capacity and tendency to, and has, misled and deceived many persons to whom said letters were sent into the erroneous and mistaken belief that said statements and representations were true, and by reason thereof to give information which they would not otherwise supply, and in many instances, to incur expense for postage in connection therewith.

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 October 15, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Herbert L. Ross, an individual, trading under the name National Inheritance Service, and O. F. Blaker, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Answers were filed, by respondent Ross on November 16, 1942, and by respondent Blaker through his attorney on December 28, 1942, in which answers the respondents 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 answers thereto, and the Commission, having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Herbert L. Ross, is an individual, trading under the name National Inheritance Service, with an office and principal place of business at 26 O'Farrell Street, San Francisco, Calif.

Respondent, O. F. Blaker, is an individual, with an office and principal place of business at 4642 York Road, Baltimore, Md.

PAR. 2. Respondent, Ross, is now and for more than 2 years last past has been engaged in the business of selling envelopes and form letters designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent, Ross, causes his envelopes and letters, when sold, to be transported from his place of business in the State of California to purchasers thereof in various States of the United States and in the District of Columbia. This 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.

In the business of selling and distributing his envelopes and letters, respondent Ross has traded under the name "National Inheritance Service."

PAR. 3. The letters sold and distributed by respondent Ross are in the forms exemplified by copies attached hereto, as Exhibits A, B, C, D, E, and F, and made a part hereof. These letters are sent to debtors and to those from whom information concerning debtors is sought.

PAR. 4. Each customer of respondent, Ross, is given a code number which identifies the customer to him. The customer inserts his code number and the names and addresses of the debtors or others from whom information is sought in the appropriate spaces in the form letters, and causes the letters to be signed, usually with fictitious names. The letters are then placed in stamped envelopes addressed to the debtors or such other persons. In the upper left-hand corner of the envelopes appears the following:

National Inheritance Service
28 O'Farrell Street
San Francisco, Cal.,

or

National Inheritance Service
4644 York Road
Baltimore, Md.

Enclosed in each letter is a reply envelope addressed to National Inheritance Service at either San Francisco Calif., or Baltimore, Md., which envelope bears the customer's code number upon its back. Postage stamps are affixed to these envelopes by the customer in some, but not in all, instances.

The customer thereafter mails the letters himself or causes them to be delivered to respondent, Ross, at San Francisco, Calif., who causes them to be deposited in the United States mail or delivered to respondent, Blaker, at Baltimore, Md., who causes them to be deposited in the United States mail.

Such replies as are received by respondent, Blaker, at Baltimore, Md., are transmitted by him to respondent, Ross, at San Francisco, Calif. These replies, together with those received at the San Francisco office of respondent, Ross, are opened and the results transmitted to the appropriate customers, who are identified by the code numbers on the envelopes or letters. Respondent, Ross, receives 50 cents for each debtor's location thus obtained.

PAR. 5. By means of these letters and envelopes respondent Ross has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to customers' debtors and others from whom information concerning such debtors is sought, that "National Inheritance Service" has correspondents in all principal cities of the world; acts as counsellor to those in charge of estates, and is engaged in the business of locating heirs to estates or to interests therein; acts as examiner for title insurance companies; engages in genealogical research, actuarial work, and the searching of records; and that the person concerning whom informa-

Conclusion

36 F. T. C.

tion is sought has or may have an interest in an estate or land which will be of financial benefit to him.

These representations are false and misleading. In truth and in fact, respondent Ross in conducting the business called "National Inheritance Service" does not have correspondents in all the principal cities of the world. He does not act as counsellor to those in charge of estates, and is not engaged in the business of locating heirs to estates or interests therein. He does not make examinations for title insurance companies, or engage in genealogical research, actuarial work, or the searching of records. He has no knowledge of any interests in estates or in lands to which the persons concerning whom information is sought may be entitled.

PAR. 6. Through the use of the name "National Inheritance Service" respondent Ross has represented, directly and by implication, that his business bears some relation to estates and to the rights and interests of heirs therein. This representation is false and misleading. In truth and in fact, respondent, Ross', business has nothing whatever to do with estates or the rights or interests of heirs therein, and the name "National Inheritance Service" is merely a disguise for the true nature of the business, to wit, the obtaining of information for use in the collection of debts.

PAR. 7. The participation of respondent Blaker aids in the accomplishment of the plan for obtaining the desired information from persons who are located in the general vicinity of San Francisco, and who are, in consequence, able to call in person at respondent Ross' San Francisco office.

PAR. 8. The use of these false and misleading statements and representations, including the use of the name "National Inheritance Service," has had the capacity and tendency to and has misled and deceived many persons to whom such letters were sent into the erroneous and mistaken belief that such statements and representations were true and that the name "National Inheritance Service" truthfully indicated and described the character of the concern making the inquiry and requesting the information, and by reason thereof, into giving information which they would not otherwise have supplied and, in many instances, incurring expense for postage in connection therewith.

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.

148

Exhibits

EXHIBIT A

Examiners for
Title Companies
Searchers of Records

Genealogists

Correspondents in
All Principal Cities
Of the World

San Francisco, Calif.
Offices
416 to 419 Grant Bldg.

NATIONAL INHERITANCE SERVICE

ESTATE COUNSELLORS

Refer to
File No.

* * * * *

Missing Heirs Located

San Francisco, Calif.

We have been endeavoring to communicate with a person of the above name and our investigations lead us to believe that you are the party. This is a matter of distinct importance to the individual in question and that we may make certain you are the one, please answer the following questions:

Full Name_____ Age_____

Residence Address (present)_____

Residence Address (previous)_____

Name of employer_____

Address_____

Nearest Relative_____ Relationship_____

Address_____

Bank References_____ What branch_____

General Description of yourself_____

If the above information checks with our records, you will be communicated with by return mail. Use envelope enclosed for your reply.

Very truly yours,
NATIONAL INHERITANCE SERVICE
By

Exhibits

36 F. T. C.

EXHIBIT B

CORRESPONDENTS IN ALL PRINCIPAL CITIES OF THE WORLD

EXAMINERS FOR TITLE COMPANIES	SEARCHERS OF RECORDS
ACTUARIES	GENEALOGISTS

NATIONAL INHERITANCE SERVICE

ESTATE COUNSELLORS

Missing Heirs Located

Offices: Grant Building

San Francisco, California

Cable Address
"NISCO"Codes Bentleys
ABC-5th & 6th
Western Union

Refer to
File No.

Some time ago we wrote you requesting certain information concerning yourself, but to date we have not received your reply.

We have been in communication with others of similar name in other sections of the country and it is of importance that you answer the questions below that we may ascertain definitely whether or not you are the party in question:

Full name_____ Place and date of birth_____

Present residence address_____

Residence addresses (previous—list on reverse side) _____

If married, mate's full name_____

Name of your employer's firm or own business_____

Business address_____ Occupation_____

(list former ones on reverse side)

Nearest relative_____ Relationship_____

Address_____

With whom do you bank_____ Address_____

General description of yourself_____

An early reply, in the enclosed self addressed envelope will aid us materially in bringing this matter to a successful conclusion.

Very truly yours,
NATIONAL INHERITANCE SERVICE

148

Exhibits

EXHIBIT C

correspondents in all principal cities of the world

EXAMINERS FOR TITLE COMPANIES

SEARCHERS OF RECORDS

ACTUARIES

GENEALOGISTS

NATIONAL INHERITANCE SERVICE

ESTATE COUNSELLORS

Missing Heirs Located

Offices: 26 O'Farrell Street

San Francisco, California

Cable address

"NISCO"

Codes Bentleys

ABC-5th & 6th

Western Union

Refer to

File No.

We have been endeavoring to communicate with a person of your name and our investigation now leads us to believe that you are the interested party.

This is a matter of distinct importance to you if you are the individual in question and that we may make certain you are the one, please answer the following questions:

Full name_____ Place and date of birth_____

Present residence address_____

Residence addresses (previous—list on reverse side)_____
(give dates)

If married, mate's full name_____

Name of employer's firm or own business_____

Business address_____ Occupation_____

(list former ones on reverse side)

Nearest relative _____ Relationship_____

Address _____

With whom do you bank_____ Address_____

General description of yourself _____

If the above information checks with the records, you will be communicated with by return mail Use envelope enclosed for your reply.

Very truly yours,

NATIONAL INHERITANCE SERVICE

P. S. Kindly mention File No. if not using this letter for your reply.

Exhibits

36 F. T. C.

EXHIBIT D

CORRESPONDENTS IN ALL PRINCIPAL CITIES OF THE WORLD

EXAMINERS FOR TITLE COMPANIES

SEARCHERS OF RECORDS

ACTUARIES

GENEALOGISTS

NATIONAL INHERITANCE SERVICE

ESTATE COUNSELLORS

Missing Heirs Located

Offices: Grant Building

San Francisco, California

Cable address

"NISCO"

Codes Bentleys

ABC 5th & 6th

Western Union

Refer to

File No.

We have been asked to communicate with the above subject and our file indicates that you may be able to assist us.

Can you give us the present address or refer us to a friend or relative who may be able to supply this information?

This is a matter of distinct importance to the person in question and an early reply will be appreciated. Just fill in the questions below and mail in the envelope enclosed.

Very truly yours,

NATIONAL INHERITANCE SERVICE

By

Full name _____

Residence address _____

Name of employer _____

Business address _____

Remarks (Use other side for additional information) _____

P. S. Kindly mention file No. if not using this letter for your reply.

148

Exhibits

EXHIBIT E

Examiners for
Title Companies
Searchers of Records

Geneologists

Correspondents in
All Principal Cities
Of the World
San Francisco, Calif.
Offices
416 to 419 Grant Bldg.

NATIONAL INHERITANCE SERVICE

ESTATE COUNSELLORS

Missing Heirs Located
San Francisco, Calif.
Subject:

Refer to
File No.

We have been asked to communicate with the above subject and our file indicates that you may be able to assist us.

Can you give us the present address or refer us to a friend or relative who may be able to supply this information?

This is a matter of distinct importance to the person in question and an early reply will be appreciated. Just fill in the questions below and mail in the envelope enclosed.

Very truly yours,
NATIONAL INHERITANCE SERVICE.
By

Full name-----
Residence Address-----
Business Address-----
Remarks-----

Order

36 F. T. C.

EXHIBIT F

CORRESPONDENTS IN ALL PRINCIPAL CITIES OF THE WORLD

EXAMINERS FOR TITLE COMPANIES	SEARCHERS OF RECORDS
ACTUARIES	GENEALOGISTS

NATIONAL INHERITANCE SERVICE

Cable address

ESTATE COUNSELLORS

"NISCO"

Missing Heirs Located

Codes Bentleys

Offices: Grant Building

ABC-5th & 6th

San Francisco, California

Western Union

Refer to
File No.

Re:

Some time ago we wrote you requesting certain information concerning the above party, but to date we have not received your reply.

Can you give us the present address or refer us to a friend or relative who may be able to supply this information:

Full name----- Age-----
 Residence address-----
 Name of employer-----
 Business address-----
 Nearest relative or friend-----
 Address-----

An early reply, in the enclosed self-addressed envelope will aid us materially in bringing this matter to a successful conclusion.

Very truly yours,
NATIONAL INHERITANCE SERVICE.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in the complaint and state that they waive all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Herbert L. Ross, and O. F. Blaker, individually, and trading as National Inheritance Service, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' form letters and envelopes in commerce, as "commerce"

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

1. Using the words "National Inheritance Service," or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents' business bears any relation to estates, or to the rights or interests of heirs therein.

2. Representing, directly or by implication, that respondents have correspondents in all the principal cities of the world.

3. Representing, directly or by implication, that respondents act as counsellors to those in charge of estates, or that respondents are engaged in the business of locating heirs to estates or interests therein.

4. Representing, directly or by implication, that respondents act as examiners for title insurance companies.

5. Representing, directly or by implication, that respondents are engaged in genealogical research, actuarial work, or the searching of records.

6. Representing, directly or by implication, that persons concerning whom information is sought through respondents' form letters have or may have any interest in estates or any other property.

7. Selling or distributing form letters or envelopes which represent, directly or by implication, that respondents' business is other than that of obtaining information to be used in the collection of debts; or which represent, directly or by implication, that the information sought through such letters is for any purpose other than for use in the collection of debts.

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

IN THE MATTER OF

**S. & M. GRAND RAPIDS FURNITURE FACTORIES, INC.,
ALSO TRADING AS S. & M. GRAND RAPIDS FURNI-
TURE COMPANY OF NEWARK, NEW JERSEY, AND
GRAND RAPIDS SHOWROOMS**

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

Docket 4642. Complaint, Nov. 24, 1941—Decision, Feb. 2, 1943

Where a corporation, engaged in interstate sale and distribution of household furniture—

- (a) Represented, directly or by implication, that it was the manufacturer of such furniture, which was made in Grand Rapids, Mich., through said trade name and such statements as "Grand Rapids Furniture Factories," "Grand Rapids Furniture Company" etc., "Grand Rapids Furniture Showrooms," "From factory direct to you," and "Entrance to factory showroom," on signs on the building in which its business was located, and by newspaper advertisements, statements on tags, labels, letterheads, and invoices, and by radio broadcasts, as well as orally through its representatives;

The facts being it at no time made any of its furniture or owned or operated any manufacturing plant; and while at times it carried in its stock articles of furniture made in Grand Rapids—furniture of which enjoys a widespread reputation and is preferred by a substantial part of the purchasing public over that originating elsewhere—at least 90 percent of its furniture was made in other places;

- (b) Represented that its furniture was sold direct from the factory to the consumer, and at wholesale prices, and that its place of business was a factory showroom, through use in advertising of legends "from factory direct to you" and "Factory Showroom," as well as through statements by its agents;

The facts being its place of business was in no sense a factory showroom, it was engaged in retail business exclusively, and its prices were retail prices;

- (c) Represented that its customary prices were in excess of those at which its furniture was actually sold in the normal course of business, through tags bearing fictitious and exaggerated price markings, and orally through its representatives; and

- (d) Represented falsely that certain articles which actually formed part of its general stock were made on special order for particular customers, through use of legend "Custom Built" on labels attached thereto;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public as to its business status, and the origin, characteristics, and value of its said products, thereby causing such public to purchase them because of such mistaken belief:

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

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

Mr. J. R. Phillips, Jr. and *Mr. James M. Hammond* for the Commission.

Mr. George Pearse and *Mr. Frederic M. P. Pearse*, of Newark, N. J., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that S. & M. Grand Rapids Furniture Factories, Inc., a corporation, also trading as S. & M. Grand Rapids Furniture Co. of Newark, N. J., and Grand Rapids Showrooms, 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, S. & M. Grand Rapids Furniture Factories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its offices and principal place of business located at 123 Ferry Street in the city of Newark, State of New Jersey. Respondent trades under the names of S. & M. Grand Rapids Furniture Co. of Newark, N. J., and Grand Rapids Showrooms, as well as under its corporate name. Said 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 Newark, State of New Jersey, to purchasers thereof 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 commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said furniture, respondent, for more than 5 years last past, has represented by its corporate name, by signs on the building in which its business is located, and by its stationery and invoices, and its salesmen have represented orally to prospective customers, that it is the manufacturer of the furniture it sells, and that its furniture is manufactured at Grand Rapids, Mich. Respondent has further used, in advertisements appearing in news-

papers of general circulation and in radio broadcasts, the following expressions and statements:

S. & M. Grand Rapids Furniture Factories, Inc.
S. & M. Grand Rapids Furniture Company of Newark, New Jersey.
Grand Rapids Showrooms.
From factory direct to you.
Entrance to factory showrooms.
It is grand to shop at Grand Rapids.

PAR. 3. The city of Grand Rapids, Mich., has been for many years and is now generally known to the public as a large and important center of the furniture industry in 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.

PAR. 4. Through the use of the statements and representations set forth in paragraph 2 hereof, and others similar thereto not specifically set out herein, respondent has represented that the furniture sold by it is manufactured in Grand Rapids, Mich., that the respondent deals exclusively in furniture manufactured and originating in the city of Grand Rapids, Mich., and that it owns and operates or directly controls plants or factories in which said furniture is manufactured and that its place of business is a factory showroom.

PAR. 5. 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., and respondent does not own, operate, or control a factory or factories wherein said furniture is made or manufactured; and said furniture is not sold direct from the factory to the consumer and without the addition of the middleman's profit. The prices at which said furniture is sold are not wholesale prices and respondent's place of business is not a factory showroom but a retail store. The prices which it charges for its furniture are higher than the usual, current, wholesale prices for such furniture.

PAR. 6. Respondent has affixed and caused to be affixed to the display furniture in its place of business tags such as "\$2 for \$1 sale" or which feature a purported sales price, such as \$25 furniture at less than half that price. The higher prices shown on said tags are fictitious, the so-called sales prices being the prices at which said furniture is customarily sold in the usual course of business. Oral representations are made by respondent's salesmen to the effect that the prices at which said furniture is offered for sale and sold are wholesale prices, when in

truth and in fact the so-called wholesale prices are the prices customarily asked for said furniture in the usual course of retail trade.

Certain of the furniture offered for sale by the respondent carry labels containing the words "Custom Built," when in truth and in fact said furniture is not made on special order of the customer, but all of said furniture is regular stock.

PAR. 7. The use of said false and misleading representations has the tendency and capacity to, and does, deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and as a result the public is induced to purchase substantial quantities of such furniture from respondent.

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 November 24, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, S. & M. Grand Rapids Furniture Factories, Inc., a corporation, also trading as S. & M. Grand Rapids Furniture Co. of Newark, N. J., and as Grand Rapids Showrooms, 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 the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, S. & M. Grand Rapids Furniture Factories, Inc., is a corporation, organized, existing, and doing busi-

Findings

38 F. T. C.

ness under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 123 Ferry Street, Newark, N. J. Respondent also trades under the names S. & M. Grand Rapids Furniture Co. of Newark, N. J., and Grand Rapids Showrooms. Respondent is now and for a number of years last past has been engaged in the sale and distribution of household furniture.

PAR. 2. In the course and conduct of its business respondent causes and has caused its furniture, when sold, to be transported from its place of business in the State of New Jersey to purchasers thereof located in another State of the United States, to wit, the State of New York. Respondent maintains and has maintained a course of trade in its furniture in commerce between the State of New Jersey and the State of New York.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its furniture, respondent has represented, directly or by implication, that it is the manufacturer of the furniture sold by it, and that its furniture is "Grand Rapids" furniture—that is, furniture manufactured in Grand Rapids, Mich. These representations have been made by respondent through its corporate name, by means of signs on the building in which its business is located, in newspaper advertisements, by means of legends, and statements appearing on tags and labels attached to its products and on its letterheads and invoices, and by statements made in radio broadcasts. Representations to the same effect have also been made orally by respondent's agents and representatives to prospective purchasers. Among and typical of the representations used by respondent are the following:

S. & M. Grand Rapids Furniture Factories, Inc.

Grand Rapids Furniture Factories.

S. & M. Grand Rapids Furniture Company of Newark, New Jersey.

Grand Rapids Furniture Showrooms.

From factory direct to you.

Entrance to Factory Showroom.

PAR. 4. It appears from the record that in June, 1940, following an investigation by the Commission and the execution by respondent of an agreement to desist from certain practices therein set forth, respondent discontinued to some extent the use of the word "Factories" in its advertising and caused the word to be deleted from some of the signs appearing on its place of business. It retained on its building, however, the legend "Entrance to Factory Showroom," and also retained on its show windows signs reading "Grand Rapids Furniture Factories." Respondent further insists that its corporate name, which includes the word "Factories," is now used by it only in the execution of legal or formal documents, and that the name is not used in its

advertising, the trade name "S. & M. Grand Rapids Furniture Company of Newark, New Jersey" having been substituted for the corporate name. It is undisputed that respondent has continued to use the words "Grand Rapids" in all of its advertising, and that such words are in constant use by it at the present time.

PAR. 5. Respondent has not at any time manufactured any of its furniture. It has never owned nor operated any manufacturing plant, but has obtained all of its furniture from other sources. While respondent has at times carried in its stock articles of furniture manufactured in Grand Rapids, Mich., such furniture has constituted only a very small part, not over 10 percent, of respondent's entire stock. At least 90 percent of the furniture sold by respondent is manufactured in places other than Grand Rapids.

PAR. 6. For many years the City of Grand Rapids, Mich., has been generally known to the public as a large and important center of the furniture industry in the United States, and furniture manufactured in Grand Rapids enjoys a widespread reputation for quality, style, and other desirable characteristics. There is a preference on the part of a substantial portion of the purchasing public for furniture manufactured in Grand Rapids over that having its origin in other places.

PAR. 7. Respondent has further represented, through the use of its advertising of the legends "From factory direct to you" and "Factory Showroom," as well as through oral statements made by its agents and representatives, that respondent's furniture is sold direct from the factory to the consumer, that the prices at which such furniture is sold by respondent are wholesale prices, and that respondent's place of business is a factory showroom. Respondent's place of business is in no sense a factory showroom. Respondent is engaged in the retail business exclusively, and the prices at which its furniture is sold are not wholesale prices but are retail prices.

Respondent has also used fictitious price markings on certain of its furniture. For example, use has been made of tags reading "\$2.00 for \$1.00 Sale," and a table which was actually sold by respondent in the regular course of business for \$11.50 was represented as having a customary price of \$25. The further representation was made orally by one of respondent's representatives in connection with this table that the price of \$11.50 was the wholesale price. Actually, the wholesale price of the table was \$7.25, and the price of \$11.50 received by respondent was the regular and customary price at which such tables were sold by respondent in the normal course of business.

PAR. 8. Respondent has also represented, through the use of the legend "Custom Built" on labels attached to certain of its furniture, that such articles were made on special order to meet the requirements

Order

36 F. T. C.

of particular customers. Actually, the articles in question were not made on special order but formed a part of the respondent's general stock.

PAR. 9. The Commission therefore finds that the representations made by respondent with respect to its business status and its products, as set forth herein, are false and misleading.

PAR. 10. The Commission finds further that the use by respondent of these false and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's business status and with respect to the origin, characteristics, and value of respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous 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 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 the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, S. & M. Grand Rapids Furniture Factories, Inc., a corporation, trading also as S. & M. Grand Rapids Furniture Co. of Newark, N. J., and as Grand Rapids Showrooms, or trading under any other name, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of 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 or as a part of any trade name used by respondent.

2. Using the words "Grand Rapids," or any simulation thereof, to designate, describe, or refer to any article of furniture which is not in fact manufactured in Grand Rapids, Michigan.

3. Using the word "Factory" or "Factories" or any other word of similar import, as a part of respondent's corporate name or as a part of any trade name used by respondent; or otherwise representing, directly or by implication, that respondent owns, operates, or controls any factory or manufacturing plant, or that respondent is the manufacturer of the furniture sold by it.

4. Using the words "Factory Showrooms" or any other words of similar import, to designate, describe, or refer to respondent's place of business; or otherwise representing, directly or by implication, that respondent operates or maintains a factory showroom.

5. Using the words "From factory direct to you," or any other words of similar import, in connection with respondent's business; or otherwise representing, directly or by implication, that respondent's furniture is sold direct from the factory to the consumer.

6. Representing as the customary or regular prices of respondent's furniture, prices which are in excess of those at which such furniture is regularly and customarily sold by respondent in the normal and usual course of business.

7. Representing, directly or by implication, that the prices at which respondent offers its furniture for sale are wholesale or reduced prices when in fact such prices are the usual and customary prices at which respondent sells its furniture in the normal and usual course of business.

8. Using the words "Custom Built," or any other words of similar import, to designate, describe, or refer to any furniture which is not made on special order to meet the requirements of a particular customer but forms a part of respondent's general stock.

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

PURITY PRODUCTS, INC., THE JOURNAL OF LIVING
PUBLISHING CORPORATION, AND VICTOR H.
LINDLAHRCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4021. Complaint, Feb. 6, 1940—Decision, Feb. 9, 1943*

Where a corporation engaged in interstate sale and distribution of a preparation known as "VBev" recommended for use as a tonic and to overcome certain vitamin deficiencies; the editor of a publication known as "Journal of Living" which he controlled and used as a medium for advertising said VBev; and a corporation engaged in sale and distribution of said publication; through advertisements in the mails and newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature and radio broadcasts—

Represented, directly and indirectly, that "VBev" was of substantial therapeutic value in the treatment of numerous diseases and ailments including loss of sleep, nervousness, nervous indigestion, tired feeling, lack of energy, underweight, and general run-down condition, and that it supplied the necessary amounts of vitamins B₁ and G to persons suffering from a deficiency thereof;

The facts being that "VBev" was nothing more than a food supplement which supplied certain vitamins in quantities which could easily be obtained through the ingestion of ordinary food; by reason of its small content of vitamin B₁ units, it had no therapeutic value in the treatment of any condition caused by deficiency thereof and none in the treatment of the other diseases or conditions listed; nervousness, nervous indigestion, sleeplessness, etc., are symptomatic of many diseases and conditions not associated with any vitamin deficiency and may result from psychological causes such as worry and irritation; and while a hot drink before retiring may induce sleep, it has no increased value for such purpose through addition of product in question;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such false representations 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* and *Mr. Robert S. Hall*, trial examiners.

Mr. William L. Taggart for the Commission.

Mr. Julian D. Heath, of New York City, and *Mr. Irving Robert Rosenhaus*, of Newark, N. J., for respondents.

170

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Purity Products, Inc., a corporation, The Journal of Living Publishing Corporation, a corporation, and Victor H. Lindlahr, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Purity Products, Inc., is a corporation, organized under the laws of the State of New Jersey, with its principal office and place of business at 1060 Broad Street, Newark, N. J. Said respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a medicinal preparation known as "V-Bev" which is recommended for use as a tonic.

Said respondent, Purity Products, Inc., causes its product, when sold, to be transported from its place of business in the State of New Jersey to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

Respondent, Victor H. Lindlahr, is an individual, with his principal office located at 1819 Broadway, New York, N. Y. Said respondent directs and controls the practices and methods of respondent, Purity Products, Inc., with respect to the advertising of its said product.

Respondent, The Journal of Living Publishing Corporation, is a corporation organized under the laws of the State of New York, with its principal office located at 1819 Broadway, New York, N. Y. The respondent, Victor H. Lindlahr, directs and controls the practices and methods of said Publishing Corporation and uses said Corporation as a medium for the advertising of said medicinal preparation. Among the publications issued and disseminated by said corporation is a periodical known as "The Journal of Living," which is used to advertise said preparation. The said Victor H. Lindlahr is editor of said periodical.

All of the respondents have acted in conjunction and cooperation with each other in carrying on the acts and practices hereinafter alleged.

PAR. 2. In the course and conduct of their aforesaid businesses, the respondents have disseminated and are now disseminating, and

Complaint

36 F. T. C.

have caused and are now causing the dissemination of, false advertisements concerning said product by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed 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 the 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, with respect to the product V-Bev, are the following:

THOUSANDS of clinical tests have conclusively proven that very often nervousness is due to nothing more than vitamin deficiency—particularly the lack of Vitamins B₁ and G. These precious elements may actually mean the difference between good health and the "half health," run-down condition that handicaps so many people.

Thousands who had suffered for years from nervousness, insomnia, poor digestion and a general below-par feeling, have been astonished to see what the simple addition of more Vitamins B and G have done for them. But heretofore getting an EXTRA supply of these vitamins was a real problem—very often unpleasant, always expensive.

Now, thanks to modern science, you can make sure of getting these extra Vitamins B and G—in the pleasantest and most inexpensive way yet discovered . . . simply by treating yourself to this delicious VBEV Confection regularly. As stated on every package, VBEV Confection has these vital food elements in concentrated form—actually 150 Units of Vitamin B-1, and 130 Units of Vitamin G.

If you're nervous and irritable, if you tire easily, and suffer from insomnia why not try eating this tempting, vitamin-concentrated confection every day, and supplement your diet with a rich extra supply of the vitamins you need! See if you don't find you're less nervous and jittery—if you're not sleeping better, looking better and feeling more vibrantly alive and well than ever before! Get a box at your health food or drug store today (or send in the coupon below) and start eating it regularly—for your health's sake!

Through the use of the representations hereinabove set forth and others of similar import not specifically set out herein, all of which

purport to be descriptive of the remedial, curative, and therapeutic properties of respondents' preparation, respondents have represented, and do now represent, directly and indirectly, that the preparation V-Bev possesses substantial therapeutic value in the treatment of numerous diseases and ailments of the human body, including loss of sleep, nervousness, poor digestion, tired feeling, lack of energy, bad health generally, and run-down condition; that V-Bev supplies to persons suffering from a deficiency of vitamins B₁ and G the necessary amount of such vitamins.

PAR. 3. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact V-Bev is without any therapeutic value in the treatment of loss of sleep, nervousness, poor digestion, tired feeling, lack of energy, bad health generally, run-down condition, or any other disease or ailment of the human body. It will not supply any deficiencies of vitamins B₁ and G or deficiencies in any other vitamins. In truth and in fact V-Bev consists principally of a mixture of ordinary foods and no therapeutic or other benefits are to be derived from its use beyond those which would be derived from the consumption of a like quantity of ordinary food.

PAR. 4. The use by the respondents of the foregoing false, deceptive and misleading representations with respect to their said product has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading representations are true, and, as a result of such erroneous and mistaken belief, the purchasing public is induced to and does purchase a substantial quantity of respondents' product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 6, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Purity Products, Inc., a corporation, The Journal of Living Publishing Corporation, a corporation, and Victor H. Lindlahr, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before trial ex-

aminers 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 Trial Examiner Arthur F. Thomas upon the evidence, briefs filed 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, Purity Products, Inc., is a corporation, organized and existing under the laws of the State of New Jersey, with its principal office and place of business at 1060 Broad Street, Newark, N. J. Said respondent is now, and for several years last past has been, engaged in the sale and distribution of a preparation known as V-Bev, which is recommended for use as a tonic and to overcome certain vitamin deficiencies in the diet. Said respondent, Purity Products, Inc., causes its preparation, when sold, to be transported from its place of business in the State of New Jersey to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, Victor H. Lindlahr, is an individual with his principal office located at 1819 Broadway, New York, N. Y. Said respondent, for several years prior to the issuance of the complaint herein and during all the times mentioned in the complaint, has disseminated and has caused the dissemination of various advertisements concerning the preparation VBev by United States mails, by insertions in newspapers and periodicals having a general circulation, by circulars and other printed matter distributed in commerce, and by continuities broadcast from radio stations.

PAR. 3. Respondent, The Journal of Living Publishing Corporation, is a corporation, organized and existing under the laws of the State of New York, with its principal office located at 1819 Broadway, New York, N. Y. Said respondent is engaged in the sale and distribution of a publication known as "Journal of Living," which has a general circulation among the various States of the United States. Re-

spondent, Victor H. Lindlahr, is editor of said publication "Journal of Living." Said respondent, The Journal of Living Publishing Corporation, together with respondent, Victor H. Lindlahr, has at all times mentioned in the complaint herein been engaged in the dissemination of advertising and advertisements concerning the preparation VBev, which is manufactured and distributed by the respondent, Purity Products Co. Said respondent, Victor H. Lindlahr, directs and controls the practices and methods of said The Journal of Living Publishing Corporation and uses said corporation as a medium for the advertising of said preparation known as VBev.

PAR. 4. In the course and conduct of their aforesaid businesses the respondents, acting in conjunction and cooperation with each other, have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said preparation VBev, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said preparation VBev by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, 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, by circulars, leaflets, pamphlets, and other advertising literature, and by continuities broadcast from radio stations which have the power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State from which said broadcasts originate, are the following:

Another thing—sleep is all important—because one of the surest signs of nervous indigestion is insomnia—sleeplessness. And right here we have one of the most effective uses of VBev. If you suffer from nervous indigestion or if you know any one who does just try VBev. Mixed in warm milk after a soothing bath in the evening just before retiring it invites sleep like nothing else. The kind of sleep that is renewing and energizing. It'll break right through the vicious nervous circle and set you right. Aside from that you have vitamin B in VBev—which is an essential factor in combating nervous disorders.

It helps—by quieting your nerves and in general raising the level of health to the point where you do have control over your sleeping habits. You get your nerves under control—because VBev gives you the nervous reserve to fall back on.

VBev gives you the precious vitamins B₁ and G which are the key to assimilation and you can eat all sorts of food and you can even eat balanced menus and

not gain any if your assimilative powers are below par. And assimilation rests so much upon the nerves. VBev is important.

I heartily endorse VBev because I know that it helped me. VBev coupled with the 7-day diet is God's gift to the skinnies. I know I haven't felt so well, so peppy, and so full of energy in years as when I was following the diet. And I intend to go on it again and stay on it, till I add enough pounds to satisfy myself in weight.

The very important part that VBev plays hinges on its vitamin B and G content, especially vitamin G. You see this vitamin helps you assimilate foods and to absorb them. * * * Assimilation means turning the foods that you have absorbed, into body tissue.

For such modern ailments as nerve tension, lack of energy, and sleeplessness due to just plain "nerves," VBev offers a safe drugless solution.

Well, here's one easy way to keep your child's appetite up to par at all times, every day! Just see that *your* child gets VBev, the tonic food beverage every day at mealtime. The clew to what VBev can do for your child is the very name itself. It stands for V as in vitamin, Bev as in beverage. Yes, VBev is a vitamin beverage, extra rich in vitamin B, the appetite stimulating vitamin. But VBev contains vitamin G, too, for robust vitality and such health giving minerals as iron, calcium and copper, all in highly concentrated form.

Believe me healthy nerves need vitamins B and G. Overtaxed nerves need much more of it. It isn't a long, dreary process of waiting weeks and months for results. If a vitamin deficiency is in any way or any degree responsible for irritable, worn, jittery nerves, then the response is fast, quick and satisfactory.

You have probably noticed that your digestion tends to be good or bad, according to your various emotional states. When you are high strung and jittery, normal digestion is indeed hard to achieve. But there is a very effective way to combat ordinary "nerves" that play havoc with digestion. That's the VBev way! The name VBev has a very special meaning for you. It stands for V as in vitamin and Bev as in beverage—VBev, the vitamin B and G beverage—designed to steady jangled, irritated nerves. VBev contains vitamin B₁, the nerve factor, and vitamin G, the vitality vitamin, in highly concentrated form. Then, too, it is fortified with essential minerals everyone needs.

VBev is a pure food auxiliary to the diet. It contains food essentials like vitamin B, for sound nerves, vitamin G, for high vitality, and important minerals to help round out the picture of glowing health. For such modern ailments as nervous tension, lack of energy and sleeplessness due to just plain "nerves."

When you take VBev from now on—you can remember that this vitamin B element—so highly concentrated in VBev—has known, beneficial effect in arthritis. I think that's so important that you arthritis sufferers should make a note of it.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, respondents have represented directly and indirectly that the preparation VBev possesses substantial therapeutic value in the treatment of numerous diseases and ailments of the human body, including loss of sleep, nervousness, nervous indigestion, tired feeling, lack of energy, underweight, arthritis, and general run-down condition and that the preparation VBev supplies to persons suffering from a deficiency of vitamins B₁ and G the necessary amount of such vitamins.

PAR. 6. Respondents' preparation VBev, according to the representations appearing on the labels of this preparation and according to various tests made of this preparation, contains 250 Sherman units of vitamin B₁ and 200 Sherman-Bourquin units of vitamin G per ounce. The number of vitamin B₁ and vitamin G units supplied by the use of this preparation in the dosage prescribed is not sufficient to have any effect upon any manifestation of vitamin B₁ or vitamin G deficiency. This preparation is nothing more than a food supplement, which supplies certain vitamins in quantities which can easily be obtained through the ingestion of ordinary foods.

The number of vitamin B₁ units supplied by VBev is so small that this preparation has no therapeutic value in the treatment of any disease or condition caused by, or associated with, a vitamin B₁ deficiency, and it will not supply the necessary amount of vitamin B₁ to persons suffering from a vitamin B₁ deficiency. This preparation has no effect upon the assimilation or absorption of food to increase weight.

Nervousness, nervous indigestion, sleeplessness, jittery, or irritated nerves, tired feeling, and lack of energy are all symptoms of many diseases and conditions of the human body which are not associated with any vitamin deficiency. Furthermore, all of these symptoms may result from psychological causes, such as worry and irritation, even though the normal diet contains the full complement of vitamins.

A deficiency of vitamin B₁ causes a nerve disorder known as polyneuritis, which is characterized by inflammation of the nervous system. This is not the condition generally referred to or described as nervousness or jittery nerves. Consequently, the representation that nervousness, jittery nerves, and nervous indigestion are caused by a deficiency of vitamin B₁ is misleading to the general public.

The taking of a hot drink before retiring may have some value in inducing sleep, but the addition of VBev to such a drink gives no additional-value for this purpose. VBev, as such, has no value in inducing sleep or overcoming insomnia. It is of no value in the treatment of nervous indigestion, underweight, tired feeling, lack of energy, or general run-down condition or in the treatment of any disease or condition of which these may be symptoms. This preparation has no value whatsoever in the treatment of arthritis and will have no beneficial effect upon such condition.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said preparation has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading representations are true and that respondents' preparation VBev has

therapeutic value in the treatment of various diseases and conditions of the human body, and as a result of such erroneous and mistaken belief, the purchasing public is induced to purchase a substantial quantity of respondents' preparation.

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, answer of the respondents, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, report of Trial Examiner Arthur F. Thomas upon the evidence, 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 respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Purity Products, Inc., a corporation, and The Journal of Living Publishing Corporation, a corporation, and their respective officers, representatives, agents, and employees, and Victor H. Lindlahr, an individual, and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their preparation known as "VBev," 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 the use of respondents' preparation VBev will have any beneficial effect upon any manifestation of vitamin B₁ or vitamin G deficiency,

(b) That respondents' preparation is anything more than a food supplement, which supplies certain vitamins in quantities which can be obtained through the ingestion of ordinary foods,

(c) That respondents' preparation has any therapeutic value in the treatment of any disease or condition caused by, or associated with, a vitamin B₁ deficiency, or that it will supply necessary amount of vitamin B₁ to persons suffering from a vitamin B₁ deficiency,

(d) That respondents' preparation has any effect upon the assimilation or absorption of food to increase weight,

(e) That respondents' preparation has any therapeutic value in the treatment of nervousness, nervous indigestion, sleeplessness, tired feeling, lack of energy, underweight, or general run-down condition or that it has any therapeutic value in the treatment of any disease or condition of which these conditions may be symptomatic,

(f) That respondents' preparation has any therapeutic value in the treatment of arthritis or that it will have any beneficial effect upon this condition.

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 VBev 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.

IN THE MATTER OF
AMERICAN MEMORIAL COMPANY

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914¹

Docket 3369. Complaint, Mar. 31, 1938—Decision, Feb. 16, 1943

Where a corporation, engaged in competitive interstate sale and distribution of marble and granite monuments, tombstones, and footstones; in advertisements in periodicals and newspapers, catalogs, pamphlets, booklets, and other literatures; directly or by implication—

- (a) Represented that its marble monuments were everlasting and that a tombstone selling for \$17.50 was a 400-pound stone; the facts being the marble tombstones, monuments, and footstones it sold were not everlasting, and many stones, represented by it to weigh 400 pounds, in fact weighed substantially less;
- (b) Represented falsely that it had executed a bond as a guaranty of the quality of its products, which insured full satisfaction on the part of the purchaser and conformed to the rules and regulations of the postal laws;
- (c) Represented that it was the manufacturer of both its marble and granite tombstones and that all profits of middlemen or commission firms were eliminated in purchase of such products from it; the facts being it was merely a jobber of its granite monuments, and profits referred to were not eliminated in purchase thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said false representations were true, and into purchase of its products because of said mistaken belief; whereby trade was diverted unfairly to it from competitors who do not falsely represent their business status or products:

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

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

Mr. John Darsey and *Mr. Carrel F. Rhodes* for the Commission.

Douglas, Andrews & Cole, of Atlanta, Ga., for respondent.

COMPLAINT

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

¹ The original findings and order published in 29 F. T. C. 323.

PARAGRAPH 1. The respondent, American Memorial Co., is a corporation organized and existing under the laws of the State of Georgia, having an office and principal place of business at 2135 Piedmont Road, Atlanta, Ga. It is now, and for several years last past has been, engaged in the business of manufacturing and selling marble and granite monuments. To a substantial extent, sales of said products have been made by respondent to corporations, partnerships, firms, and individuals located in States other than the State of Georgia, pursuant to which sales, and as a part thereof, shipments are, and have been, made by the respondent from the State of Georgia through and into other States of the United States to such purchasers.

PAR. 2. There are other corporations, partnerships, firms, and individuals engaged in the sale of similar products, or products to be used for the same and similar purposes, who cause their said products, when sold, to be transported from their respective places of business to purchasers thereof located in the various other States of the United States, and with such corporations, partnerships, firms, and individuals, the respondent is, and has been at all times herein named, in competition in commerce as herein described.

PAR. 3. In connection with the promotion of sale, and sale of the said products in interstate commerce as aforesaid, and as an inducement for the purchase thereof, the respondent causes many false and misleading statements and representations respecting the quality and weight of its said products, and the guarantees issued and executed incident to the sales thereof to be inserted in newspapers, periodicals, and circulars which are distributed in the various States of the United States. The following statements and representations are typical, but not all-inclusive, of those made by the respondent to the foregoing effect and meaning:

This monument is built of genuine, natural quarried marble guaranteed by us to be everlasting;

400-lb. tombstone, \$17.95, genuine marble and granite footstone free, lettering free;

Our bond of guarantee protects you in quality and safe delivery to destination;
One of the strongest guarantees ever given on monuments;

Buy the direct way and save the difference;

Buy direct from our factory with no middleman or commission firm involved;

This guarantee is given to you to conform to the rules and regulations of the United States mail laws, which in effect say, "you must be fully satisfied or your money back" on anything ordered by mail.

PAR. 4. Through the foregoing statements and representations, and through other similar statements not herein set out in full, the respondent has represented that its marble monuments are everlasting; that is tombstone selling for \$17.95 is a 400-pound stone; that a genuine

granite footstone is furnished free in connection with the \$17.95 tombstone; that respondent has executed a bond which is available to purchasers as a guaranty of the quality of respondent's products; that respondent's guaranty insures full satisfaction on the part of the purchaser and conforms to the rules and regulations of the United States postal laws; that respondent is the manufacturer of both its marble and granite tombstones; and that all profits of a middleman or commission firm are eliminated by purchasing granite or marble monuments from the respondent.

The foregoing statements and representations made by the respondent in connection with the promotion of sale, and sale, of its said products are false and misleading. The said monuments made from marble are not everlasting. The tombstone selling for \$17.95 is not a 400-pound stone and does not weigh within a hundred pounds or more of the amount represented, and no granite footstone is furnished free in connection with the purchase of the \$17.95 tombstone. The respondent has not posted any bond which insures and guarantees to its customers the quality of its products. The guaranty issued by the respondent does not insure satisfaction on the part of purchasers and does not insure conformity to the rules and regulations of the postal laws of the United States Government. Respondent is not the manufacturer of the granite monuments which it sells but, on the contrary, is merely a jobber thereof.

PAR. 5. There is on the part of the general purchasing public a preference for dealing direct with the manufacturer of the product being purchased rather than with any middleman or broker, said members of the purchasing public believing that in so doing they secure superior quality, more advantageous prices, and other benefits.

PAR. 6. Respondent's false and misleading representations of and concerning its said products and its status, as hereinabove set forth, have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of said products into the erroneous belief that such representations are true, and have caused a substantial portion of such purchasers, because of such erroneous belief, to purchase respondent's products, thereby unfairly diverting trade in said commerce to the respondent from competitors who truthfully represent their products. As a result thereof, injury is now, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, MODIFIED 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 1938, issued and subsequently served its complaint in this proceeding upon the respondent, American Memorial Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto were introduced before a trial examiner of the Commission theretofore duly designated by it. Stipulations as to certain facts were made a part of the record herein by agreement of counsel of record. Said testimony, stipulations, 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, stipulations and other evidence, and briefs in support of the complaint and in opposition thereto; and the Commission, having duly considered the matter, on July 11, 1939, issued and subsequently served upon said respondent its findings as to the facts and conclusion based thereon and its order requiring the respondent to cease and desist from the practices charged in the complaint.

Subsequent thereto, having further considered the findings as to the facts and order to cease and desist issued in this case on July 11, 1939, and being of the opinion that public interest required that the findings as to the facts heretofore issued be modified, the Commission issued and subsequently served upon the respondent an order to show cause why this case should not be reopened for the purpose of issuing a modified findings as to the facts and a modified order to cease and desist, and set the matter for hearing upon said order to show cause on January 27, 1943.

Thereafter, on January 27, 1943, this cause came on for hearing before the Commission, and the Commission, having duly considered the matter and the record herein and being now fully advised in the premises, makes this its modified findings as to the facts and its conclusion drawn therefrom:

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, American Memorial Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia and having its principal office and place of business located at 2135 Piedmont Road, Atlanta, Ga.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing marble and granite monuments, tombstones, and footstones. Respondent sells its said monuments, tombstones, and footstones to members of the purchasing public located in the various States of the United States and in the District of Columbia and causes said products when sold by it to be transported from its aforesaid place of business in Georgia to purchasers thereof at their respective points of location in the various States of the United States other than Georgia and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is, and has been during all the times mentioned herein, engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with firms and partnerships and individuals selling and distributing marble and granite tombstones, monuments, and like products designed, intended, and used for the same or similar purposes. Among such competitors in said commerce are many who do not in any manner misrepresent their business status or the life and duration of their respective granite and marble tombstones, monuments, and like products.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said products, the respondent has caused false and misleading representations with respect to its business status, the life and duration of its tombstones, monuments, and footstones, and the guaranties executed incident to the sale thereof, to be inserted in magazines and newspapers having a circulation among and between the various States of the United States, and in catalogs, pamphlets, bulletins, and other literature disseminated by respondent to the members of the purchasing public located in the various States of the United States and in the District of Columbia. Among and typical of such representations so used and disseminated as aforesaid are the following:

This monument is built of genuine natural quarried marble guaranteed by us to be everlasting.

400-lb. tombstone—\$17.95—Genuine marble and granite foot-stone free—lettering free.

Our bond of guarantee protects you in quality and safe delivery to destination.

One of the strongest guarantees ever given on monuments.

This guarantee is given to you to conform to the rules and regulations of the United States mail laws which in effect say "you must be fully satisfied or your money back" on anything ordered by mail.

Buy direct from our factory with no middle man or commission firm involved.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent has represented directly and by implication that its marble monuments are everlasting; that its tombstone selling for \$17.95 is a 400-pound stone; that respondent has executed a bond which is available to purchasers as a guaranty of the quality of respondent's products; that respondent's guaranty insures full satisfaction on the part of the purchaser and conforms to the rules and regulations of the United States postal laws; that respondent is the manufacturer of both its marble and granite tombstones; and that all profits of middlemen or commission firms are eliminated by reason of the purchase of granite or marble monuments from the respondent.

PAR. 6. The said statements and representations by the respondent, used and disseminated in the manner aforesaid, are false, misleading, and deceptive. In truth and in fact, the tombstones, monuments, and footstones composed of marble offered for sale and sold by respondent are not everlasting. The respondent has offered for sale and sold many stones which it represented to weigh 400 pounds which stones in truth and in fact weighed substantially less than 400 pounds. The respondent has not posted a bond which insures and guarantees to its customers the quality of its products and has not obtained any approval from the United States Government or the Post Office Department thereof for any guaranty made incident to the sale of its said products; nor has the respondent posted any bond with the United States Government or with anyone else which insures satisfaction on the part of its customers, or which insures conformity by the respondent with the rules and regulations of the postal laws of the United States Government. Respondent does not manufacture the granite monuments which it sells and distributes but is merely a jobber thereof. The profits of middlemen and commission firms are not eliminated by reason of the purchase of granite monuments from respondent.

PAR. 7. There is now, and has been during all the times mentioned herein, a preference on the part of a substantial number of members of the purchasing public for dealing directly with the manufacturer of a product rather than with a middleman or jobber, because of the belief that in dealing with the manufacturer they secure more advantageous prices and other benefits.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that said

Order

36 F. T. C.

false and misleading statements and representations are true and into the purchase of respondent's products 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 respondent from its competitors engaged in the sale of and distribution of similar products and who do not falsely represent their respective products or their business status.

CONCLUSION

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

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon order to show cause why this case should not be reopened for the purpose of issuing a modified order to cease and desist, which order came on for hearing before the Commission on January 27, 1943, and the respondent having been duly served with a certified copy of said order prior to said hearing, and the Commission having considered the matter and the record herein and being now fully advised in the premises.

It is ordered, That the respondent, American Memorial Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of granite or marble monuments, tombstones, or footstones in commerce between and among the various States of the United States and in the District of Columbia, do forthwith cease and desist from:

1. Representing by the use of the words "everlasting" or "eternal," or any other word of similar import or meaning, or in any other manner, that any monument, tombstone, or footstone composed of marble is everlasting.

2. Representing that respondent's monuments or tombstones weigh 400 pounds or any other specified weight or weights unless and until such is the fact.

3. Representing that the respondent has posted a bond guaranteeing the quality of its products, or has posted a bond which insures conformity by the respondent with the laws of the United States Government or with the rules and regulations of any agency thereof, or has posted any other bond, unless and until such is the fact.

4. Representing, by means of pictorial or other representations of a factory or manufacturing plant, or in any other manner, that respondent makes or manufactures its granite monuments or tombstones unless and until it owns and operates or directly and absolutely controls the factory or plant wherein such monuments or tombstones are made or manufactured by it.

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

IN THE MATTER OF

ASA L. WOOTEN, TRADING AS UNITED STATES MARBLE
& GRANITE COMPANY

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914¹

Docket 4138. Complaint, May 21, 1940—Decision, Feb. 16, 1943

Where an individual, engaged in competitive interstate sale and distribution of tombstones and monuments; in advertisements in catalogues, price lists, and other advertising material—

- (a) Represented and implied falsely that his marble memorials would stand the ravages of time forever, were everlasting and forever durable, would never fade, stain, or tarnish, would always retain their original brightness and were "age enduring"; and
- (b) Represented and implied, through his "Gold Bond Guarantee," that purchasers were assured of the everlasting quality and durability of his said products, the freedom thereof from fading, staining, or tarnishing, and were protected if his said representations were not true; the facts being purchasers were not thus assured, or in any wise protected, because said so-called "Gold Bond Guarantee" was not supported by any fund set aside by him or anyone else to assure fulfillment of the terms thereof;

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 products; whereby substantial injury was done to competitors, many of whom do not misrepresent their products:

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Asa L. Wooten, an individual, trading as United States Marble and Granite Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Asa L. Wooten, is an individual, trading as United States Marble and Granite Co., with his office and principal place of business located at Oneco, Fla. Respondent is now, and for some time last past has been, engaged in the sale and distribution of

¹ The original findings and order are published in 31 F. T. C. 508.

marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

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

PAR. 2. In the course and conduct of his said business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. To induce the purchase of his said products, the respondent has disseminated and is now disseminating false and misleading statements and representations with respect to said products. Such statements and representations are inserted in catalogues having a general circulation and in circulars, price lists, and other advertising material which are distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

Memorials that will stand the ravages of time.

Select white, gray or blue marble.

An everlasting memorial.

Forever durable.

World's best genuine marble or granite.

Good for continuous wear.

To last for all time.

They will never fade but always retain their original brightness.

Age enduring.

These monuments will last for all time.

Quality cannot be excelled.

Gold Bond Guarantee.

The whole memorial is guaranteed to never stain nor tarnish.

Is one of the strongest guarantees ever given.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not set out herein, the respondent represents that his memorials will stand the ravages of time forever; that they are everlasting and forever durable; that they are the world's best genuine marble or granite monuments; that they will last for all time, will never fade, stain, or tarnish and will always retain their original brightness; and that said memorials are age enduring. Re-

spondent represents or implies that through his "Gold Bond Guarantee" purchasers are assured of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true and said products do stain, tarnish, fade, and lose their original brightness and are not forever durable and everlasting.

PAR. 5. The foregoing representations and implications are false, misleading, and deceptive. In truth and in fact, respondent's memorials will not stand the ravages of time forever; they are not everlasting or forever durable but they will stain, tarnish, fade, and deteriorate and will not retain their original brightness. Said memorials are not the world's best genuine marble or granite monuments as there are many other marble or granite monuments on the market which are as good as, or better than, respondent's said products. In truth and in fact, said so-called "Gold Bond Guarantee" in no wise assures purchasers of the everlasting quality and durability of said products or the freedom of such products from fading, staining, or tarnishing and does not in any wise protect purchasers of respondent's said products if respondent's claims and representations are not true because said so-called "Gold Bond Guarantee" is not supported by any fund set aside by the respondent or anyone else for the purpose of assuring fulfillment of the terms thereof.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who sell and distribute like or similar products who do not misrepresent the respective qualities of said products or matters pertaining thereto.

PAR. 7. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products. As a result thereof substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 21st day of May 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Asa L. Wooten, an individual, trading as United States Marble & Granite Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 6th day of June 1940 the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the respondent's answer thereto, and the Commission, having duly considered the matter, on July 9, 1940, issued and subsequently served upon said respondent its findings as to the facts and conclusion based thereon and its order requiring the respondent to cease and desist from the practices charged in the complaint.

Subsequent thereto, having further considered the findings as to the facts and order to cease and desist issued in this case on July 9, 1940, and being of the opinion that public interest required that the findings as to the facts heretofore issued be modified, the Commission issued and subsequently served upon the respondent an order to show cause why this case should not be reopened for the purpose of issuing a modified findings as to the facts and a modified order to cease and desist, and set the matter for hearing upon said order to show cause on January 27, 1943.

Thereafter, on January 27, 1943, this cause came on for hearing before the Commission, and the Commission, having duly considered the matter and the record herein and being now fully advised in the premises, makes this its modified findings as to the facts and its conclusion drawn therefrom:

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Asa L. Wooten, is an individual, trading as United States Marble & Granite Co., with his office and principal place of business located at Oneco, Fla. Respondent is now, and for some time last past has been, engaged in the sale and distribution of marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes his said products, when sold, to be shipped from his place of business in the State of Florida to purchasers thereof

Findings

36 F. T. C.

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

PAR. 2. In the course and conduct of his said business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals, partnerships, firms, and corporations, engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. To induce the purchase of his said marble tombstones and monuments, respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to said marble products. Such statements and representations are inserted in catalogs having a general circulation and in circulars, price lists, and other advertising material which are distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

Memorials that will stand the ravages of time.

Select white, gray or blue marble.

An everlasting memorial.

Forever durable.

Good for continuous wear.

To last for all time.

They will never fade but always retain their original brightness.

Age enduring.

These monuments will last for all time.

Quality cannot be excelled.

Gold Bond Guarantee.

The whole memorial is guaranteed to never stain or tarnish.

Is one of the strongest guarantees ever given.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not set out herein, the respondent represents that his memorials composed of marble will stand the ravages of time forever; that they are everlasting and forever durable; that they will last for all time, will never fade, stain, or tarnish and will always retain their original brightness; and that said memorials are age enduring. Respondent represents or implies that through his "Gold Bond Guarantee" purchasers are assured of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true and said products do stain, tarnish,

fade, and lose their original brightness and are not forever durable and everlasting.

PAR. 5. The foregoing representations and implications are, false, misleading, and deceptive. In truth and in fact, respondent's memorials composed of marble will not stand the ravages of time forever; they are not everlasting or forever durable but they will stain, tarnish, fade and deteriorate and will not retain their original brightness. In truth and in fact, said so-called "Gold Bond Guarantee" in no wise assures purchasers of the everlasting quality and durability of said products or the freedom of such products from fading, staining, or tarnishing and does not in any wise protect purchasers of respondent's said products if respondent's claims and representations are not true because said so-called "Gold Bond Guarantee" is not supported by any fund set aside by the respondent or anyone else for the purpose of assuring fulfillment of the terms thereof.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who sell and distribute like or similar products who do not misrepresent the respective qualities of said products or matters pertaining thereto.

PAR. 7. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products. As a result thereof substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

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

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon order to show cause why this case should not be reopened for the purpose of issuing a modified order to cease and desist, which order came on for hearing before the Commission on January 27,

Order

36 F. T. C.

1943, and the respondent having been duly served with a certified copy of said order prior to said hearing, and the Commission having considered the matter and the record herein and being now fully advised in the premises.

It is ordered, That the respondent, Asa L. Wooten, an individual, trading as United States Marble & Granite Co., or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of marble tombstones and monuments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's memorials composed of marble will stand the ravages of time forever, or that they are everlasting or forever durable, or that they will never fade, stain, or tarnish.

2. That respondent's said marble tombstones and monuments will always retain their original brightness or that said memorials are age enduring.

3. The respondent has posted a "Gold Bond Guarantee" assuring purchasers of the everlasting quality and durability of his said marble tombstones and monuments and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true.

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

Complaint

IN THE MATTER OF

PASADENA PRODUCTS, INC.

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

Docket 3945. Complaint, Nov. 8, 1939—Decision, Feb. 17, 1943

Where a corporation, engaged in interstate sale and distribution of its "Sal-Ro-Cin" medicinal preparation containing analgesics acetylsalicylic acid and acetphenetidin which give temporary relief from pain associated with such conditions as neuritis, sciatica, arthritis, neuralgia, and headaches; through advertisements in newspapers and periodicals, circulars and other matter, and radio broadcasts—

Failed to reveal facts material with respect to the consequences which might result from the use of said "Sal-Ro-Cin" under prescribed or usual conditions, in that the drug acetphenetidin, when used in excessive doses or over a long period of time, causes tissue suffocation accompanied by toxic manifestations, and may cause damage to such organs as the liver, kidney, and spleen and produce circulatory failure; and persons suffering from pain might take preparation in excessive doses or continuously over long periods with resulting possible injury to health;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said preparation was not injurious, and of causing its purchase thereof by reason of such mistaken belief:

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

Before *Mr. John P. Bramhall*, *Mr. Randolph Preston*, and *Mr. Edward E. Reardon*, trial examiners.

Mr. Charles S. Cox and *Mr. Robt. N. McMillen* for the Commission.
Ticknor & Maxwell, of Pasadena, 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 Pasadena Products, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Pasadena Products, Inc., is a corporation, organized and 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 300 North Lake Avenue, Pasadena, Calif.

Complaint

36 F. T. C.

The respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of a medicinal preparation designated "Sal-Ro-Cin" in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of California to purchasers thereof at their respective points of location 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 medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

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

FOR RHEUMATISM

TRY THIS FREE TEST

Sufferers of Neuritis, Sciatica, Muscular Rheumatism, Lumbago and Neuralgia will welcome Sal-Ro-Cin. This California product contains ingredients which bring quick relief from excruciating pains which accompany these dreaded ailments. If you are suffering and wish to enjoy restful sleep, free from agoniz-

ing pain, go to the ----- and receive A Free Trial package of this amazing preparation. Sal-Ro-Cin sells for 35¢ at all good druggists.

Sal-Ro-Cin tablets will give satisfactory results to those who suffer the pains of rheumatism, neuralgia, and neuritis * * * try Sal-Ro-Cin tablets free of charge, * * *

* * * we will gladly mail you a liberal free sample of SAL-RO-CIN TABLETS,
* * *

FOR NEURITIS PAINS

Make This 25¢ Test

Sufferers of pains associated with Neuritis, Arthritis, Muscular Rheumatism, or Lumbago will welcome SAL-RO-CIN. This California product contains ingredients which aid in bringing relief from the excruciating pains which often accompany these ailments. We suggest, if you are suffering such pains which probably often prevent restful sleep, you go to your druggist and get a 25¢ package of SAL-RO-CIN. Money back if not delighted.

Sal-Ro-Cin is recommended for the relief of MUSCULAR ACHES and PAINS and MUSCULAR LUMBAGO, NEURALGIA, HEADACHES and HEAD COLDS.

PAR. 3. By use of the representations hereinabove set forth in paragraph 2 and other representations similar thereto, not specifically set forth herein, the respondent represents that its medicinal preparation "Sal-Ro-Cin" is a competent and effective treatment for rheumatism, neuritis, sciatica, arthritis, muscular rheumatism, lumbago and neuralgia, headaches and head colds, and that said product will bring relief from pains accompanying these ailments; that the use of said preparation will "free" such person from pain; that the use of said product will enable one to sleep; that respondent will mail anyone requesting a liberal free sample of Sal-Ro-Cin tablets.

PAR. 4. In truth and in fact said preparation is not a competent and effective treatment for rheumatism, neuritis, sciatica, arthritis, muscular rheumatism, lumbago, and neuralgia and headaches, and head colds, and said preparation will at best, bring only palliative relief from pains accompanying these ailments. The use of said preparation will not "free" such persons from pain and the use of said product will not enable one to sleep. Respondent will not mail free a liberal sample of Sal-Ro-Cin tablets or any other quantity of samples of Sal-Ro-Cin tablets to anyone requesting the same, but makes a charge for such samples as are sent.

PAR. 5. The advertisements disseminated by respondent, as aforesaid, are also false in that said advertisements fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary and usual, may result in serious injury to the health of the user.

By reason of the presence of acetphenetidin, an acetanilid derivative, in respondent's preparation, the indiscriminate use of such

Findings

36 F. T. C.

preparation when continued over long periods may result in chronic acetanilid intoxication of the user, and may cause blood changes principally in the red blood cells, destroying the oxygen-carrying properties and replacing them with methemoglobin and paraamidol-phenol. Continued use of said preparation may result in a visceral degeneration of the liver, spleen, and kidneys with a varied train of symptoms, cyanosis, anemia, and circulatory and respiratory depression.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading advertisements with respect to its preparation disseminated as aforesaid has had, and now has, a capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements are true and that respondent's preparation is not injurious to the health of the user and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 8, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Pasadena Products, 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 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 filed 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, Pasadena Products, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of California and having its principal office and place of business at 300 North Lake Avenue, Pasadena, Calif. The respondent is now, and for several years last past has been, engaged in the sale and distribution of a medicinal preparation designated "Sal-Ro-Cin" in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said product, when sold to be transported from its aforesaid place of business in the State of California, to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by United States mail, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, and by continuities broadcast from radio stations having sufficient power to 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 various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation "Sal-Ro-Cin" by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. The advertisements disseminated and caused to be disseminated as hereinabove set forth are false in that they fail to reveal facts material with respect to the consequences which may result from the use of respondent's preparation, "Sal-Ro-Cin," under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Respondent's preparation is in tablet form, each tablet containing the following ingredients:

Acetphenetidin	2½ gr.
Acetylsalicylic acid.....	3½ gr.
Caffeine Alkaloid.....	½ gr.

Order

36 F. T. C.

The ingredients actylsalicylic acid and acetphenetidin are analgesics which give temporary relief from the symptoms of pain associated with such conditions as neuritis, sciatica, arthritis, neuralgia, and headaches. The drug acetphenetidin, when used in excessive doses or over a long period of time, is absorbed into the blood stream and affects the ability of the blood cells to exchange oxygen and carbon dioxide at a normal rate, causing tissue suffocation accompanied by toxic manifestations, and may cause damage to certain organs of the body such as the liver, kidney, and spleen and may produce circulatory failure. Neither the advertising nor the labeling of this product contains any warning against excessive or long-continued use of this preparation. Persons suffering from pain might have a tendency to take this preparation in excessive doses or over long-continued periods of time, which might result in injury to health.

PAR. 4. The use by respondent of the foregoing false advertisements with respect to its preparation disseminated as aforesaid, has had, and now has, a capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation is not injurious to the purchasing public and, 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 in violation of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Pasadena Products, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its preparation known as "Sal-Ro-Cin,"

or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act which advertisement fails to reveal that the frequent or continued use of respondent's preparation "Sal-Ro-Cin," may be dangerous and should not be taken in excess of the dosage recommended of one to two tablets two to four times daily: *Provided, however,* That if the directions for use, wherever they appear, on the label, in the labeling, or both on the label, and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the precautionary statement, "CAUTION: Use Only as Directed."

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said preparation "Sal-Ro-Cin" which advertisement fails to reveal facts material with respect to the consequences which may result from the use of respondent's preparation as required 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.

Complaint

36 F. T. C.

IN THE MATTER OF
D. M. ALACHUZOS COMPANY

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

Docket 4051. Complaint, Mar. 7, 1940—Decision, Feb. 17, 1943

Where a corporation, engaged in interstate sale and distribution of sponge and chamois-skin products—

Represented that it was a sponge "producer" and placed said term upon its letterheads, price lists, cards, and other advertising material; when in fact it was not such, but purchased raw sponges from the captains of various sponge-fishing boats and cleaned, graded, and compressed them into bales for sale to the trade;

With tendency and capacity to mislead and deceive a substantial number of purchasers and prospective purchasers as to the nature and extent of its business and thereby cause purchase of its said product:

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

Before *Mr. James A. Purcell* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Merle P. Lyon 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 D. M. Alachuzos Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, D. M. Alachuzos 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 336 South Fourth Street, in the city of Philadelphia, of said State. Respondent now is, and for more than 1 year last past has been, engaged in the business of offering for sale, selling, and distributing sponge and chamois-skin 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 its place of business in the State of Pennsylvania to jobbers, retailers, and purchasers thereof located in various States of the United States other than the State of Pennsylvania and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, and for the purpose of inducing the purchase of its said products from respondent, it has been, and is, the practice of respondent to state and represent to prospective purchasers and purchasers located in the various States of the United States and in the District of Columbia that respondent is a "producer" of sponges; that it is a "packer" of sponges; that it maintains and operates its own packing houses for the processing and packing of its sponge products at Tarpon Springs in the State of Florida, at Nassau in the Bahama Islands, and at Calymnos in the Aegean Sea; that it maintains its own force of trained workmen expert in selecting and grading sponges and that it is a "member of sponge exchange markets."

Demonstrative of the said statements and representations, among others, so made by respondent, and appearing on its letterheads and price lists, are the following:

PACKING HOUSES AT THE FISHERIES

Nassau, Bahamas, N. P.

Calymnos, Aegean Sea Island

Tarpon Springs, Florida.

D. M. ALACHUZOS COMPANY

Sponge Producers—Importers of Chamols

336 South Fourth St., Philadelphia, Pa., U. S. A.

MEMBERS OF SPONGE EXCHANGE MARKETS

Demonstrative of said statements and representations, among others, so made by respondent in the body of letters to prospective purchasers is the following:

We are Producers and Packers of sponges. We maintain in our own Packing House at the Sponge Fisheries with a force of trained workmen expert in selecting and grading sponges.

PAR. 3. The aforesaid statements and representations are false and misleading in that respondent has not been and is not a "producer" of sponges; has not been, and is not, a "packer" of sponges and has not maintained or operated, and does not maintain or operate, its own packing houses for the processing and packing of its sponge products at the places mentioned or elsewhere; has not maintained, and does not

maintain, a force of trained workmen expert in the selecting and grading of sponges and was not a member of any market exchange at points where it purchased sponges or sponge products at the time said representation was made.

Among buyers and sellers of sponge products, the term "sponge producer," or "producer," as applied to the sponge trade, means and signifies, and has heretofore meant and signified, one who engages in all the functions of gathering or harvesting sponges from marine beds and thereafter processing the same into a finished commercial product and who owns or controls and operates all the equipment and facilities therefor. A "processor" of sponges is one who merely performs the function of cleaning and otherwise converting the raw sponge product into a finished commercial sponge product and who owns or controls and operates all the equipment and facilities therefor. At no time during the making of the statements and representations here complained of has respondent owned or controlled and operated the facilities and equipment of a producer or processor of the facilities and equipment employed in the production, processing, finishing, and packing of the sponges respondent offered for sale and sold.

PAR. 4. The aforesaid false and misleading statements and representations made by respondent, as hereinabove alleged, have had, and have a tendency and capacity to mislead and deceive a substantial number of purchasers and prospective purchasers of sponge products into the false and erroneous belief that the said statements and representations are true and into the purchase of respondent's sponge products in reliance on such erroneous belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, D. M. Alachuzos 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 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 exceptions filed thereto, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, D. M. Alachuzos Co., is a corporation, organized and existing under, and by virtue of, the laws of the State of Pennsylvania, with its principal office and place of business located at 336 South Fourth Street in the city of Philadelphia, State of Pennsylvania. Respondent is now, and for several years last past has been, engaged in the business of offering for sale, selling, and distributing sponge and chamois-skin products in commerce among and between the various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business and for the purpose of inducing the purchase of its said products, the respondent represents that it is a sponge producer and causes such term "sponge producer" to be placed upon its letterheads, price lists, cards, and other advertising material.

PAR. 3. In truth and in fact, respondent is not a sponge producer, but, instead, the respondent purchases raw sponges from the captains of various sponge-fishing boats, which sponges the respondent then cleans, grades, and compresses into bales for sale to the trade.

PAR. 4. The aforesaid false and misleading statements and representations made by the respondent have had a tendency and capacity to mislead and deceive a substantial number of purchasers and prospective purchasers of sponge products as to the nature and extent of respondent's business and to cause the purchase of respondent's sponge products.

CONCLUSION

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

Order

36 F. T. C.

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

It is ordered, That the respondent, D. M. Alachuzos 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, and distribution of sponge products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that the respondent is a producer of sponges.
2. Using the term "producer" in advertising or in any other manner when such use represents that respondent is a sponge producer.

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
NORTHWEST FILM AD SERVICE, INC., AND
FRANK D. ATKINS

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

Docket 4007. Complaint, Feb. 1, 1940—Decision, Feb. 20, 1943

Where a corporation and its president, engaged in the competitive interstate sale and distribution of an advertising film service which consisted of advertising films displaying such nationally advertised articles as automobiles, refrigerators, washing machines, and automobile tires, to which were attached advertising trailers with the name and address of the purchaser of the film service and such other information as purchaser might request; contracting with retailers to deliver films advertising the dealer's products to theaters named for a specified price, and dealer agreeing to purchase from them a moving picture trailer containing his name, address and other advertising material—

(a) Represented that corporation in question was the producer of said films and trailers, and that their business was nation-wide in scope, placing upon various orders and advertising material such notations as "General Offices 505 Guardian Bldg., Portland, Oregon" and "Offices in Portland, New Orleans, Chicago, Cleveland, Kansas City, New York, Dallas, Minneapolis";

When in fact they were not engaged in the production of any film, but solely in the distribution of films produced by a Kansas City concern, and they had no branch office or any place of business other than that in Portland, Oreg.;

(b) Represented that they had made arrangements with various automobile, refrigerator, washing-machine, and tire manufacturers or distributors to co-operate with purchasers of their advertising film service, and to pay a portion of the cost thereof;

The facts being no such agreement had been entered into and they were not authorized to make any such representations; and

(c) Falsely represented, in some cases, that they would not solicit or sell any competitive dealer, notwithstanding fact they did so, and supplied advertising films covering competitive products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true and into purchase of said film service; whereby trade was diverted unfairly to them from competitors:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. B. G. Wilson* for the Commission.

Complaint

36 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 Northwest Film Ad Service, Inc., a corporation, and Frank D. Atkins, 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. The respondent, Northwest Film Ad Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its office located at 2746 Northeast Twenty-fifth Avenue in the city of Portland, Oreg.

The respondent, Frank D. Atkins, an individual, is president of the aforesaid corporate respondent, and formulates, controls, and directs the policies of the corporate respondent. The respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter set forth.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the sale and distribution of advertising films and moving picture trailers. They cause such films and trailers, when sold, to be transported from their aforesaid place of business in the State of Oregon to the purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondents maintain, and at all times mentioned herein, have maintained, a course of trade in said films and trailers in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. The respondents are now, and during all the times mentioned herein have been, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the sale and distribution of advertising films and moving picture trailers 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, and for the purpose of inducing the purchase of their advertising films and trailers, the respondents have made, and are now making, false and misleading statements and representations concerning such films and trailers, as well as false and misleading statements and representations concerning similar products sold and distributed by their competitors.

Among and typical of such false and misleading statements and representations made by the respondents are the following:

1. That the respondents are producers of advertising films and trailers as well as distributors;

2. That the respondents' business is Nation-wide in its scope, and that respondents maintain offices in numerous cities throughout the United States;

3. That the respondents have contacted the manufacturers or distributors of various products sold by the prospective purchaser, and that such manufacturers or distributors have agreed to cooperate with such prospective purchaser in the film advertising of their respective products, and will pay a portion of the cost of such advertising; and that the prospective purchaser is being contacted by respondents at the instance of the manufacturer or distributor;

4. That the respondents have negotiated contracts with the local theaters to show their advertising films and trailers;

5. That the respondents are agents of certain of their competitors, and have been authorized to renew contracts existing between the prospective purchaser and such competitors;

6. That the advertising film supplied by the respondents will be of the kind and quality designated by the purchaser;

7. That if the prospective purchaser will purchase their advertising film respondents will not solicit the competitors of such purchaser;

8. That certain of respondents' competitors are out of business.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact the respondents are not producers of films of any kind, but are distributors only. The respondents' business is not Nation-wide in scope, but is confined largely to the States of Oregon, Washington, and California. Respondents maintain no offices other than their office in the city of Portland, Oreg. Respondents do not contact the manufacturers or distributors of any products with respect to enlisting the cooperation of such manufacturers or distributors in such film advertising, or with respect to obtaining an agreement from such manufacturers or distributors to pay a portion of the cost of such advertising. The contacts made by respondents with prospective purchasers are not made at the instance of such manufacturers or distributors, but are made wholly upon the initiative of respondents, and without the knowledge of such manufacturers and distributors. In many instances the respondents do not negotiate contracts with local theaters for the showing of such films.

The respondents are not the agents of any of their competitors nor are the respondents authorized by such competitors to renew contracts existing between the prospective purchasers and such competitors. In

Findings

36 F. T. C.

many instances the film actually supplied the purchaser by the respondents is not of the kind and quality specified by the purchaser, but is of a different kind, and is usually of an inferior quality. The respondents do not confine their sales of films to one purchaser in a particular line of business, but proceed to solicit the purchase of such films from other persons and business concerns engaged in the same line of business as the original purchaser. In many instances the competitors represented by respondents as being out of business are not in fact out of business, but are conducting their respective businesses in regular course.

PAR. 6. The use by respondents of the aforesaid false and misleading statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of a substantial quantity of respondents' advertising films and trailers. As a result, trade is diverted unfairly to respondents from their competitors, and thereby substantial injury has been done, and is being done, to competition in commerce among and between the several States of the United States, and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 1, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Northwest Film Ad Service, Inc., a corporation, and Frank D. Atkins, 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 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 Trial Examiner Lewis

C. Russell upon the evidence, and brief in support of the complaint (no brief having been filed by the respondents or oral argument requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Northwest Film Ad Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its principal office located at 505 Guardian Building in the city of Portland, Oreg. Respondent, Frank D. Atkins, is an individual, and president of the respondent, Northwest Film Ad Service, Inc., and formulates, controls, and directs the policy of said corporate respondent. The respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for some time last past have been engaged in the sale and distribution of various advertising film services and moving picture trailers. The advertising film service sold by respondents consisted of advertising films usually displaying nationally advertised articles, such as automobiles, refrigerators, Bendix washing machines, and Goodyear tires. To these films were attached specially produced advertising trailers, with the name and address of the purchaser and such other advertising information as the purchaser might request. During the period from September 1937 to October 1938 the respondents were distributors of advertising films and moving-picture trailers produced by the United Film Ad Service, Inc., of Kansas City, Mo.

PAR. 3. In the course and conduct of their business, the respondents entered into contracts with retail dealers to deliver films advertising products sold by such dealers, to theaters named in such contracts, for a specified price usually payable in instalments, and, in addition, the retail dealer agreed to purchase from the respondents a moving-picture trailer containing the name, address, and other advertising material of such dealer. Respondents caused such moving-picture trailers, when sold, and such advertising films, when contracted for screening, to be transported to the dealer or the theater designated by him, located in various States of the United States other than the State of Oregon or other than the State in which such films and trailers were produced. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in

said films and trailers in commerce among and between the various States of the United States.

PAR. 4. Respondents are now, and during all the times mentioned herein have been, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the sale and distribution of advertising film services and moving-picture trailers in commerce among and between the various States of the United States.

PAR. 5. In connection with the sale and distribution of said advertising films and moving-picture trailers, the respondents represented that the respondent, Northwest Film Ad Service, Inc., was the producer of said advertising films and trailers, as well as the distributor thereof, and that the respondents' business was Nation-wide in scope. In this connection the respondents placed upon various orders and advertising material the notations "General Offices, 505 Guardian Bldg., Portland, Oregon" and "Offices in Portland, New Orleans, Chicago, Cleveland, Kansas City, New York, Dallas, Minneapolis," by which means respondents represented that the respondent, Northwest Film Ad Service, Inc., was a corporation with its general offices located at Portland, Oreg., and with branch offices located in the various cities named. In fact, the respondents were not engaged in the production of any films but were engaged solely in the distribution of films produced by the United Film Ad Service, Inc., of Kansas City, Mo., and said respondents did not at any time have branch offices located in any of the cities named or any office or place of business other than that located in Portland, Oreg.

PAR. 6. For the purpose of inducing the purchase of the advertising film service and moving-picture trailers distributed by the respondents, the respondents represented that they had made arrangements with various automobile, refrigerator, washing-machine, and tire manufacturers or distributors to cooperate with purchasers of respondents' advertising film service and trailers advertising their respective products and to pay a portion of the cost of such advertising. In fact, no manufacturer or distributor had entered into any agreement with the respondents to participate in any advertising sold by the respondents to their respective dealers, and the respondents were not authorized to represent that any manufacturer or distributor would pay any portion of the dealer's cost of respondents' advertising film service or trailers.

PAR. 7. In some cases the respondents have induced the purchase of their advertising film service and moving picture trailers by falsely representing that they would not solicit or sell any competitive dealer,

when in fact the respondents did solicit and sell such competitive dealers and supply advertising films covering competitive products.

PAR. 8. The use by the respondents of the aforesaid false and misleading statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondents' advertising film service and moving picture trailers. As a result, trade has been diverted unfairly to the respondents from their competitors who are likewise engaged in the sale and distribution of advertising film services and moving picture trailers in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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 respondents, 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 Trial Examiner Lewis C. Russell 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Northwest Film Ad Service, Inc., a corporation, and its officers, and Frank D. Atkins, an individual, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of advertising film service or moving picture trailers in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the respondents are producers of advertising films and moving picture trailers or that the respondents have branch offices or places of business in any city or State where no such branch office or place of business is operated or maintained.

Order

36 F. T. C.

2. Representing directly or by implication that any manufacturer, distributor, or other person will pay any portion of the cost of any advertising film service or moving picture trailer unless directly authorized by such manufacturer, distributor, or other person to make such representations.

3. Representing directly or by implication that respondents will not sell competitors of any purchaser of respondents' advertising film service or moving picture trailers unless respondents refrain from such sale.

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

G. F. PERGANDE, DOING BUSINESS AS PERGANDE
INSTITUTE

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

Docket 4583. Complaint, Sept. 18, 1941—Decision, Feb. 20, 1943

Where an individual, engaged in sale and distribution of correspondence courses for civil service examinations for positions in the United States Government—

- (a) Represented, directly or by implication, through advertisements in the form of cards, circulars, and pamphlets, that during the period involved there were a large number of positions available at all times in various branches of the Government;

The facts being that, until the war emergency, the supply of eligible persons for Government employment and whose names appeared on the Civil Service registers greatly exceeded the number of positions open; and such statements (made by said individual) as "100,000 more jobs under Civil Service" were misleading, in that most of the positions were already filled and persons in question were placed under Civil Service through noncompetitive examination; and the "Executive order placing 45,000 exempt positions under Civil Service" did not open that number of positions to those seeking Government employment; and the statements "42,141 appointed in 1936," and "44,484 appointed in 1937" were similarly misleading, in that they did not, as implied, apply to positions listed by said individual, but covered all appointments during years involved;

- (b) Represented that examinations were being held frequently and that appointments for such positions were made within a short time after examinations were passed;

The facts being examinations were not held frequently, but, in case of numerous positions, at intervals of several years; for certain positions only those were eligible who lived within the district served by a particular post office, and, during the years involved, appointment to civil service positions could not ordinarily be expected within several months, and in many cases more than a year after applicant had passed examination;

- (c) Represented that eligibility to take an examination could be determined by applicant or said individual, and that a high rating in the examination assured an early appointment;

The facts being that eligibility could be determined only by the Civil Service Commission and, because of veterans' preference, apportionment of appointments and other reasons, a high rating did not assure early appointment; and

- (d) Misleadingly represented or implied, through use of word "Institute" in his trade name and advertising, that he conducted an institution of higher learning devoted to research or instruction in philosophy, arts, sciences, or other learned subjects, that his school had a staff of educators and the facilities and resources required to carry on such work; when in fact it possessed none of such qualifications;

Complaint

36 F. T. C.

With tendency and capacity to mislead and deceive a substantial portion of the public in aforesaid respects, thereby causing its purchase of said courses of instruction, because of such mistaken belief:

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

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

Mr. William L. Pencke for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, 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 G. F. Pergande, individually, and doing business under the name and style of Pergande Institute, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, G. F. Pergande, is an individual, trading and doing business under the name and style of Pergande Institute, with his office and principal place of business at 314 Randolph Place NE., Washington, D. C.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain civil service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause his said courses of study and instruction to be transported from his said place of business in the District of Columbia to, into, and through the various States of the United States to purchasers thereof in such States.

PAR. 3. In the sale of said courses of study and instruction, respondent makes use of printed advertising matter mailed to prospective students throughout the United States and the District of Columbia, through which various representations are made in regard to said courses of instruction and matters and things connected therewith. Among such representations are those which represent or imply that

there are large numbers of positions available at all times in various branches of the United States Government, that examinations are being held frequently and that appointments to such positions take place within a short time after examinations have been taken and passed; that eligibility for the taking of an examination may be determined by the applicant or by the respondent; and that the respondent has taken and passed three civil service examinations and in each case was offered an appointment almost immediately. Typical of such representations are the following:

100,000 more jobs under Civil Service

President Roosevelt issued an Executive Order placing 45,000 "exempt" positions under Civil Service, effective February, 1939.

Partial List U. S. Civil Service Positions.

42,141 appointed in 1936

44,484 appointed in 1937

Railway Mail Clerk, City Mail Carrier, Post Office Clerk, Rural (motor) carrier, Postmaster 3rd or 4th class, Statistical Clerk, Clerical-Filing, Sub Clerical-Jr. Messenger, Telephone Operator, Elevator Conductor, Watchman-Guard, Customs Patrol Inspector, Immigration Patrol Inspector, Assistant Lay Inspector (Meat Inspector), Bookkeeper, Auditor-Income Tax, Internal Revenue Agent, Forest and Field Clerk, Typist, Stenographer, Storekeeper-Gauger, Junior Civil Service Examiner.

Send me a service manual describing training for the government jobs for which I am eligible.

Could you feel assured of a higher rating and early appointment?

Mr. G. F. Pergande has taken three Civil Service examinations and in each case was offered an appointment almost immediately.

In truth and in fact, the representation that 100,000 more jobs under Civil Service are available is false in that there were at no time available jobs to the extent of 100,000. The representation that 45,000 "exempt" positions were placed under Civil Service is misleading in that the placing of said positions under Civil Service did not make available 45,000 additional positions to be filled from the civil service register. Moreover, a substantial number of new positions are generally filled by promotions and transfers of employees already under Civil Service.

The representation that 42,141 individuals were appointed in 1936 and 44,484 were appointed in 1937, followed by a description of a number of civil service positions and headed by the statement "Partial List U. S. Civil Service Positions" is misleading in that it implies that the stated number of appointments had been made with respect to the particular positions listed by the respondent when in fact said figures constitute the total number of appointments in all civil service

Complaint

36 F. T. C.

positions which includes a large number of positions in the civil service not listed by the respondent.

The representation that the respondent has taken three civil service examinations and in each instance was offered an appointment almost immediately is false and misleading; by implying that said examinations were taken recently, and that offers of appointments were made almost immediately in all three instances. In truth and in fact, two of said examinations were taken by respondent approximately 15 years ago, and the third examination was taken in the year 1934, and respondent did not become eligible for appointment at that time for the reason that he withdrew his application prior to the completion of the investigations conducted with respect to each applicant.

In many instances examinations for various positions are not held as frequently as is generally implied by the respondent and the time which elapses between the filing of an application for the taking of a civil service examination and the actual appointment to a position is generally far greater than is represented and implied throughout the respondent's catalog, and this is true particularly with respect to applications numbering many thousands. Among the positions described in respondent's catalog are those of Assistant Lay Inspector, Customs and Immigration Patrol Inspector, Inspector of Customs, and Storekeeper-Gauger. In truth and in fact, an examination was held for Assistant Lay Inspector in September of 1930, and no other examination was announced until May 1939; an examination for Customs Patrol Inspector, Immigration Patrol Inspector, and Inspector of Customs was announced for September 1938. The last examination for Storekeeper-Gauger was held in May 1934, and no other examination has been held since that time.

In representing that his service manual describes training for the Government jobs for which prospective students of respondent's courses may be eligible, the respondent implies that either he or such prospective student is qualified to determine whether such student is eligible for a particular position, when in truth and in fact the Civil Service Commission is the only body competent to determine the eligibility of persons for civil service positions.

The implication that a higher rating in the examination will carry with it an early appointment is exaggerated and misleading for the reason that there are other factors besides a high rating which determine the appointment of individuals whose names have been placed on the register, such as established claims to preference, promotions, State apportionment, and priority status for entry on the reemployment list. Moreover, an appointment officer may select anyone of the highest three eligibles certified to fill a vacancy.

PAR. 4. The respondent, by the use of the word "Institute" in his trade name, advertising literature, letterheads, and otherwise, represents or implies to prospective students that he conducts an institution of learning with a staff of competent, experienced, and qualified educators, and that his school is an extensive organization offering training and instruction in philosophy, arts, sciences, and other learned subjects. The use of said word as aforesaid is false and misleading. In truth and in fact, respondent offers one general course of instruction which is substantially the same, being modified and adapted to the respective positions and examinations for which his students wish to prepare. Respondent, in the conduct of his business, does not offer training or instruction in philosophy, arts, sciences, or other learned subjects. There is no faculty engaged in teaching resident students, the method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by employees of the respondent.

PAR. 5. The representations of respondent as aforesaid have had, and do have, the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that a large number of civil service positions are available, that examinations are held frequently in the subjects described in respondent's catalog, that applicants may determined their eligibility for admission to examinations, that the respondent has been offered three positions immediately after taking the respective examinations therefor, and that his business is an institute designed for the promotion of learning in philosophy, arts, and sciences. As a result of such misrepresentations, members of the public purchase respondent's courses of study and instruction and pursue the same.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 8, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, G. F. Pergande, individually, and doing business under the name and style of Pergande Institute, 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 com-

plaint, 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, G. F. Pergande, is an individual, trading and doing business under the name of Pergande Institute, with his office and principal place of business located at 314 Randolph Place NE., Washington, D. C. Respondent is now and for a number of years last past has been engaged in the sale and distribution of courses of study intended for use in preparing students for examinations for certain civil service positions in the United States Government, such courses being pursued by correspondence through the medium of the United States mail.

PAR. 2. In the course and conduct of his business respondent causes and has caused his courses of study, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof located in the various States of the United States. Respondent maintains and has maintained a course of trade in his courses of study in commerce between the District of Columbia and the various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his courses of study, respondent distributes among prospective students printed advertising matter in the form of cards, circulars, and pamphlets, which advertising matter contains numerous representations with respect to respondent's courses of study and with respect to the number of positions in the United States Government which are available to persons enrolling for such courses of study and taking the civil service examinations. Among and typical of representations which appeared in respondent's advertising material distributed during the years 1938, 1939, and 1940 are the following:

215

Findings

President Roosevelt issued an Executive Order placing about 45,000 "exempt" positions under civil service, effective February, 1939.

(Com. Ex. No. 3, p. 3)

* * * Could you feel assured of a high rating and an early appointment? * * *

(Com. Ex. No. 3, p. 5)

100,000 MORE JOBS UNDER CIVIL SERVICE

PARTIAL LIST U. S. CIVIL SERVICE POSITIONS

42,141 APPOINTED IN 1936

44,484 APPOINTED IN 1937

Railway Mail Clerk-----	* * *
City Mail Carrier-----	* * *
Post Office Clerk-----	* * *
Rural (motor) Carrier-----	* * *
Postmaster—3rd or 4th Class-----	* * *
Statistical Clerk-----	* * *
Clerical-Filing-----	* * *
Sub-Clerical:	
Jr. Messenger-----	* * *
Telephone Operator-----	* * *
Elevator Condr-----	* * *
Watchman-Guard-----	* * *
Customs Patrol Inspector-----	* * *
Immigration Patrol Insp-----	* * *
Assistant Lay Inspector-----	* * *
(Meat Inspector)	
Bookkeeper-----	* * *
Auditor Income Tax-----	* * *
Int. Rev. Agent	
Forest & Field Clerk-----	* * *
Typist-----	* * *
Stenographer-----	* * *
Storekeeper-Gauger-----	* * *
Jr. Civil Serv. Examiner-----	* * *

* * * send me a Service Manual describing training for the government jobs for which I am eligible. * * *

(Com. Ex. No. 4)

PAR. 4. Through the use of these representations and others of a similar nature, respondent represented, directly or by implication, that during the period in question there were large numbers of posi-

Findings

36 F. T. C.

tions available at all times in various branches of the United States Government; that examinations were being held frequently, and that appointments to such positions took place within a short time after examinations were taken and passed; that eligibility for the taking of an examination could be determined by the applicant or by respondent; and that a high rating in the examination assured an early appointment.

PAR. 5. The Commission finds from the evidence that these representations were grossly exaggerated, misleading, and deceptive. During the period in question there were not large numbers of positions available in the United States Civil Service. In fact, until the period of national emergency brought on by the war, the supply of eligible persons available for Government employment, and whose names appeared on the registers of the United States Civil Service Commission, greatly exceeded the number of positions open. Examinations were not held at frequent intervals. On the contrary, in the case of numerous positions, several years frequently elapsed before new examinations were held. For example, in the case of substitute railway postal clerks, no open competitive examinations were held during the period between 1937 and 1941. Quarterly reopened examinations for "10-point preference people" (such as disabled veterans) were held, but these examinations were not open to applicants generally. Again, in the case of the position of guard, no general examinations were held between 1937 and 1940. In the case of storekeeper-gauger, the last open competitive examination was held in 1934. In the case of assistant lay inspector (meat inspector), only 25 persons were appointed to positions during 1939 and 1940, although there were 8,000 persons on the civil service register for that position. During the period beginning in 1931 and ending in 1941, there were no open competitive examinations for the position of junior file clerk. Moreover, in the case of certain positions, such as post office clerk substitute and clerk carrier substitute, only those persons are eligible for the examination who live within the district served by the particular post office where the position is open. This fact tends to reduce greatly the opportunity of applicants generally to obtain positions.

During the years in question, an appointment to a civil service position could not ordinarily be expected within a short time after the applicant had passed the examination. Usually several months, and in many cases a year or more, elapsed before an appointment could reasonably be expected. The eligibility for the taking of an examination cannot be determined by the applicant or by respondent, but can be determined only by the United States Civil Service Commission.

Nor did a high rating in the examination assure an early appointment. In addition to such factors as the preference accorded veterans and the apportionment of appointments among the several States, vacancies were and are often filled by promotions and transfers from within the service. Moreover, an appointing officer may select any one of the highest three eligible persons certified by the Civil Service Commission for a vacancy.

The statement made by respondent in his advertising that there were "100,000 More Jobs Under Civil Service" was misleading in that it implied that there were available to applicants Government positions to the extent of 100,000. Most of the positions in question were already filled, and the persons in such positions were placed under the civil service through noncompetitive examinations. Similarly, the Executive order referred to in respondent's advertising as placing 45,000 "exempt" positions under civil service did not in fact result in opening that number of positions to persons seeking to enter the employ of the Government. Respondent's statement that 42,141 persons were appointed to civil service positions in 1936 and 44,484 in 1937 were likewise misleading in that the figures in question appeared in connection with a list of certain positions set forth in respondent's advertising, and the statement implied that the appointments were to the listed positions. Actually, the figures covered all of the appointments to all of the positions in the civil service during the years in question, and many of the appointments were to positions not listed in respondent's advertising and in connection with which respondent has never offered any course of instruction.

PAR. 6. Through the use of the word "Institute" in his trade name and in his advertising literature, respondent represents or implies to prospective students and the public generally that he conducts an institution of higher learning devoted to academic or scientific research or to the giving of instruction in philosophy, arts, sciences, or other learned subjects; that his school has a staff of competent and experienced educators qualified to conduct such research or give such instruction; and that his school possesses the facilities and resources required to carry on such work. Respondent's school does not in fact possess any of these qualifications, and the use of the word "Institute" to designate and describe his school is therefore erroneous and misleading.

PAR. 7. The Commission finds further that the use by respondent of the misleading and deceptive representations herein set forth had and has the tendency and capacity to mislead and deceive a substantial portion of the public with respect to the nature and status of respondent's business, and with respect to respondent's courses

of instruction and the opportunities for appointment to United States Government positions, and the tendency and capacity to cause such members of the public to purchase respondent's courses of instruction as a result of the erroneous and mistaken belief engendered by such representations.

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, G. F. Pergande, individually, and trading as Pergande Institute, 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 courses of study, do forthwith cease and desist from:

1. Using the word "Institute," or any abbreviation or simulation thereof, as a part of respondent's trade name or as a part of the name of respondent's school; or otherwise representing, directly or by implication, that respondent's school is an institute.

2. Representing, directly or by implication, that the number of positions available in the United States Civil Service, or in any branch thereof, is greater than is actually the fact.

3. Representing, directly or by implication, that examinations for positions in the United States Civil Service are held at more frequent intervals than is actually the fact, or that appointments to positions are made within a shorter period of time after the examination than is actually the fact.

4. Representing, directly or by implication, that eligibility for the taking of a civil service examination may be determined by the applicant or by respondent, or by anyone other than the United States Civil Service Commission.

5. Representing, directly or by implication, that a high rating in a civil service examination assures the applicant an early appointment to a position.

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

36 F. T. C.

IN THE MATTER OF

PAUL J. SIMMONS, DOING BUSINESS AS HARLEM
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4843. Complaint, Sept. 30, 1942—Decision, Feb. 23, 1943*

Where an individual, engaged in interstate sale and distribution of jewelry and novelties; in advertisements in periodicals and in pamphlets, folders, and other advertising matter—

- (a) Represented that rings advertised to sell for \$1 each were set with real diamonds, through such statements as "Real Diamond Ring Simulated"; the facts being said products were set with imitation stones;
- (b) Represented that a matching wedding band was "given free" with each purchase of a diamond ring, through such statements as "Free Matching Wedding Band Set With Flashing Stones" and "To Introduce This Amazing Value We Offer a Matching Band Absolutely Free"; when in fact their cost was included in purchase price of the ring, and they formed part of a combination offer; and
- (c) Made use of term "yellow or white gold effect" in describing his rings, with tendency and capacity to confuse purchasers as to whether such rings were made of metallic gold, or merely had a gold color; the facts being they contained no appreciable amount of gold, either yellow or white;

With effect of misleading and deceiving a portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said jewelry:

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

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. George Landesman, 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 Paul J. Simmons, an individual, trading as Harlem 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, Paul J. Simmons, is an individual, trading as Harlem Co., having his office and principal place of business located at 30 Church Street, New York, N. Y.

The respondent is now, and for more than 2 years last past has been, engaged in the business of offering for sale, sale, and distribution of jewelry and novelties to purchasers thereof in commerce between and among the various States of the United States, and in the District of Columbia.

Respondent causes his said products, when sold, to be shipped from his said 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 jewelry and novelties in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, and for the purpose of inducing the purchase of his jewelry, the respondent has disseminated false and misleading statements and representations with respect to his said products. Such false and misleading statements and representations have been inserted in magazines having a general circulation, and also in pamphlets, folders, and other advertising matter distributed to purchasers and prospective purchasers situated in various States of the United States. Among and typical of such false and misleading statements and representations are the following:

Real diamond ring, simulated \$1.00.

Free! Matching wedding band, set with flashing stones.

Free! To introduce this amazing value we offer a matching band absolutely free.

Yellow or white gold effect.

PAR. 3. Through the use of the foregoing statements and representations, and others of similar import, not specifically set out herein, the respondent represents, and has represented, directly and by implication, that his rings so advertised to sell for \$1 each are in fact set with "real" diamonds; that said rings contain an appreciable amount of yellow or white gold; and that a matching wedding band is given "free" to each purchaser of a diamond ring.

PAR. 4. The foregoing statements and representations disseminated by the respondent in the manner aforesaid are false, misleading, and deceptive. In truth and in fact, said rings offered for sale and sold by respondent at \$1 each do not contain real diamonds, but are set with imitation stones. The rings represented as being gold do not contain any appreciable amount of gold, either yellow or white. Said wedding bands offered free to each purchaser of a ring are not given free to each purchaser thereof, but the cost of such wedding band is

Findings

36 F. T. C.

included in the purchase price of said rings, and such rings form part of a combination offer.

PAR. 5. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to respondent's jewelry has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 30, 1942, issued and subsequently served its complaint in this proceeding upon respondent, Paul J. Simmons, an individual, trading as Harlem Co., charging him with unfair and deceptive acts and practices in violation of the provisions of said act. After the issuance of said complaint and filing of respondent's 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 in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and it was agreed that the Commission may proceed upon said statement of facts 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 respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation as to the facts; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Paul J. Simmons, is an individual, trading as Harlem Co., having his office and principal place of busi-

ness located at 30 Church Street, New York, N. Y. The respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing jewelry and novelties. Respondent causes his said products, when sold, to be shipped from his said place of business in the city 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 jewelry and novelties in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, and for the purpose of inducing the purchase of his jewelry, the respondent has disseminated misleading statements and representations with respect to his said products. Such misleading statements and representations have been inserted in magazines having a general circulation and also in pamphlets, folders, and other advertising matter distributed to purchasers and prospective purchasers situated in various States of the United States. Among and typical of such misleading statements and representations are the following:

Real Diamond Ring Simulated, \$1.

Free Matching Wedding Band Set With Flashing Stones.

To Introduce This Amazing Value We Offer a Matching Band Absolutely Free.

PAR. 3. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondent represents, and has represented, directly and by implication, that his rings so advertised to sell for \$1 each are, in fact, set with real diamonds and that a matching wedding band is given "free" to each purchaser of a diamond ring.

PAR. 4. The foregoing statements and representations disseminated by the respondent in the manner aforesaid are misleading and deceptive. In truth and in fact, said rings offered for sale and sold by respondent at \$1 each do not contain real diamonds but are set with imitation stones. The rings do not contain any appreciable amount of gold, either yellow or white. Said wedding bands offered "absolutely free" to each purchaser of a ring are not given free to each purchaser thereof, but the cost of such wedding band is included in the purchase price of the ring required to be purchased and such wedding band forms part of a combination offer.

PAR. 5. The Commission further finds that respondent used the term "yellow or white gold effect" to describe the rings which he offered for sale. Respondent stated that he did not intend the use of such phrase to constitute a representation that such rings contained

an appreciable amount of either yellow or white gold, but he also admitted, and the Commission finds, that the use of such phrase does in fact have the capacity and tendency to confuse a portion of the purchasing public with respect to whether such rings are in fact made of metallic gold or merely have a gold color.

PAR. 6. The use by the respondent of the foregoing deceptive and misleading statements, representations, and advertisements with respect to respondent's jewelry has had, and now has, the capacity and tendency to, and does, mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondent's answer, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record; 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, Paul J. Simmons, an individual, trading as Harlem Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of jewelry and novelties in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "real diamond rings simulated," or any other term of similar import or meaning, to describe or in any way refer to rings which are made with imitation stones, or otherwise representing that rings which are made with imitation stones are made with diamonds.

2. Using the term "yellow or white gold effect," or any other term of similar import or meaning, to in any way describe or refer to rings which do not contain an appreciable amount of metallic gold.

3. Representing in any way that an article which is in fact part of a combination offer is a free gift, or is given free or without cost, or representing that any article which may be obtained upon the purchase of another article is given free or without cost.

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

IN THE MATTER OF

AMERICAN INDUSTRIAL RUBBER COMPANY, DOING
BUSINESS AS NU-TRED TIRE AGENCY, CHAMPION
RUBBER COMPANY, L. & S. TIRE DISTRIBUTORS, AND
HARVESTER TIRE SALES: AND HAROLD TRILLING,
MANNY G. TENENBAUM, OLIN K. LEWIS, AND E. F.
SMITHCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4819. Complaint, Aug. 20, 1942—Decision, Mar. 2, 1943*

Where a corporation, two individuals who were its general manager and sales manager and directed and controlled its business practices, and its regional sales manager who had authority to conduct business under various trade names employed by it and, in addition to personally selling its products, procured subagents and other salesmen to sell them; engaged in the purchasing and recapping of old automobile tires and interstate sale and distribution of said recapped products—

- (a) Represented, directly and by implication, through statements in advertising circulars, price lists, order blanks, and other printed matter distributed to prospective salesmen, salesmen, and dealers, that their recapped tires were of unusually high quality and would render satisfactory service over extended periods of time; and
- (b) Represented, as aforesaid, that only those casings were used by them for recapping which were of high quality and free from serious defects, and that before any casings were so used, they were carefully examined, tested, and repaired;

The facts being their said products were decidedly inferior; casings used—usually obtained from peddlers and junk dealers—were, in many instances, wholly unfit for recapping, being old, badly worn, and weak, frequently with large cracks and other serious defects; no serious effort was made to inspect or test casings before purchase; and many were beyond repair; and

- (c) Represented, as aforesaid, that their tires were guaranteed to render satisfactory service for 6 months or some other designated period, and that only in exceptional instances would they fail to render such service;

The facts being they did not give satisfactory service; mileage obtained was often negligible, they lasting, in some cases, only a few weeks or days before blow-outs; and so-called guarantee—which was, in fact, an agreement to supply another tire at half-price if original did not render satisfactory service for designated period of time—was, under the circumstances, of little or no practical benefit to the purchaser; and

- (d) Supplied to their salesmen for display to prospective purchasers cross-sections of tires purporting to be samples of their said products, which were in fact not representative but far superior to the casings actually used by them;

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to their said tires, thereby inducing purchase thereof; and with further tendency to mislead and deceive a substantial number of prospective salesmen, and to cause them to undertake sale of said tires in the mistaken belief that aforesaid representations were true:

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. Webster Ballinger*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

La Rochelle, Brooks & Beardsley, of Chicago, Ill., for American Industrial Rubber Co., Harold Trilling, and Manny G. Tenenbaum:

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that American Industrial Rubber Co., a corporation, and Harold Trilling, Manny G. Tenenbaum, Olin K. Lewis, and E. F. Smith, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Industrial Rubber Co., is a corporation organized and existing under the laws of the State of Illinois, having its office and principal place of business at 4405 South La Salle Street, Chicago, Ill., and trading and doing business under the names "Nu-Tred Tire Agency," "Champion Rubber Company," "L. & S. Tire Distributors," and "Harvester Tire Sales." Respondent, Harold Trilling, is the principal stockholder, a director, and general manager of the corporate respondent. Respondent, Manny G. Tenenbaum, is in the employ of the corporate respondent, is in charge of its purchases of old automobile tires for recapping, and its sales of "recapped" tires. Said individual respondents are in control of the management, policies, and operation of said corporation, particularly in respect to the acts, practices, and methods herein alleged.

Respondents, Olin K. Lewis and E. F. Smith, are "master salesmen" for the corporate respondent, and have acted individually and jointly with all of the other respondents in connection with the activities carried on under the names Nu-Tred Tire Agency, Champion Rubber Co., L. & S. Tire Distributors, and Harvester Tire Sales. Respondents, Olin K. Lewis and E. F. Smith, in their capacities as

Complaint

36 F. T. C.

"master salesmen" or regional sales managers, receive additional overriding commissions on sales made by other salesmen, and they have acted together as a team and individually in selling respondents' recapped tires and in procuring subagents and other salesmen to sell respondents' said tires. Respondents, Olin K. Lewis and E. F. Smith, have participated in all of the activities charged herein and cooperated with the other respondents in carrying out the practices alleged.

PAR. 2. Respondents are now, and have been for more than 3 years last past, engaged in the business of purchasing old automobile tires, placing a new outer wearing surface upon these by the process known as "recapping," and distributing and selling "recapped" tires.

PAR. 3. In the course and conduct of their business respondents have caused said recapped tires, when sold, to be transported from their aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the said "recapped" tires 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 said business and for the purpose of inducing the purchase of said recapped tires, respondents have engaged in the practice of describing and designating certain of their recapped truck tires by the names "Super-Service" and "Double-Duty," and certain of their recapped passenger car tires by the names "Custom-Built," "Super-cap," and "Champion."

Through the use of the aforesaid names and designations, respondents have represented, directly and by implication, that the said tires are capable of rendering, and will render, service beyond or better than that of, and are superior to, other recapped tires.

PAR. 5. In the course and conduct of their said business, and for the purpose of inducing the purchase of said recapped tires, respondents have made, and caused to be made, by means of price lists, order blanks, advertising circulars, and other printed matter distributed to their salesmen in various States of the United States and in the District of Columbia, and used by such salesmen in connection with the sale of said tires, representations and claims with respect to the character, utility, and merit of the said tires, and respondents' "guarantee" thereof.

Among and typical of said representations and claims so made, are the following:

You can pay more—You can't buy better tires.
Solid, carefully tested casings.

* * * manufactured by modern, improved methods * * * expert workmanship, high quality, carefully inspected and expertly repaired casings. A leader in the field of price and quality.

* * * heavy duty, high quality casings which have been carefully tested and expertly repaired * * * careful and cautious examinations of each casing insures trouble free service.

The tires listed in th's order blank are high quality re-caps * * * all tires have been carefully selected and expertly repaired by skilled workmen.

Six Month Guarantee. These Champion Standard Recapped Tires are unconditionally guaranteed for 6 months. Any tire failing to give satisfactory service within this time, regardless of cause, will be replaced at one half list price.

Guarantee. All Champion Custom Built Recap Tires carry a 9 month unconditional guarantee. Any tire failing to give satisfactory service regardless of cause, within this time will be replaced at one half the list price.

Guarantee. Super Service Recapped Truck Tires are guaranteed for 90 days of satisfactory service. Any tire failing to give satisfactory service regardless of cause within that time will be replaced at one half of the list price.

Guarantee. Double Duty Truck Tires are guaranteed for 6 months of satisfactory service. Any tire failing to give satisfactory service regardless of cause within this time will be replaced at one half of the list price.

The L. & S. Tire Distributors of Chicago, Illinois, hereby warrant to the above purchaser that the materials and labor incorporated into the tire listed above are of such quality that the tire may be expected to render service for a minimum period of nine (9) months from the date of purchase for passenger car service or six (6) months from the date of purchase for commercial car service, provided same is used under usual conditions in such respective service; and the L. & S. Tire Distributors warrant the tire to give the purchaser satisfactory service under usual conditions of wear and tear except as herein-after stated during such respective minimum periods of time.

If the tire fails to give the purchaser satisfactory service under any usual conditions of wear and tear, except as hereinafter stated, the L. & S. Tire Distributors agree under this warranty and adjustment to replace such tire for one half ($\frac{1}{2}$) the then prevailing list price.

This warranty and adjustment agreement does not cover punctures, tires ruined in running flat, tires injured or destroyed by fire, wreck or collision, tires cut by chains or by obstructions on vehicle, theft, tubes used in any form, or tires used on taxicab or on common carrier bus service.

PAR. 6. Through the use of the aforesaid statements and representations, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that their tires are equal in all respects to other recapped tires, including those sold at prices greater than those at which respondents' tires are offered; that recaps are applied by respondents only to casings which have been carefully examined, tested, and repaired, are of high quality, and are solid; that the recap is expertly applied; that the recapped tires themselves are of high quality, and that only in comparatively rare instances will the tires fail to give the periods of satisfactory service stated in the various "Guarantees."

PAR. 7. The aforesaid claims and representations so made and disseminated by respondents in the course of their aforesaid business are false and misleading. In truth and in fact respondents' recapped tires are not of high quality but of very poor quality. The recap is so inexpertly applied that, in many cases, it "peels off" in use. The old casings, to which the recap is applied, are so carelessly examined, tested, and repaired, if at all, that many of them are so weak, damaged, or old as to be unfit for use, or incapable of rendering any substantial amount of service, after recapping. They are greatly inferior in quality to many other recapped tires. They are so poor that in only comparatively rare cases do they give satisfactory service for the periods "guaranteed," and respondents' so-called "guarantee," in view of the character of its wares, is not a bona fide guarantee of quality or service, but a fictitious one. The recap adds little, if anything, to the strength or durability of the casing or "carcass" to which it is applied, and the utility and durability of a recapped tire depends substantially upon the carcass being strong and in good condition. The purchasers of tires are motivated by a desire to obtain those which will give satisfactory service for a period of time, and this desire is not fulfilled by the purchase of tires that do not give such service even though they may be replaced by others equally bad, at half price. Many of respondents' tires were, to all practical intents and purposes, worthless.

PAR. 8. In the course and conduct of their business, and for the purpose of inducing the purchase of their recapped tires, respondents have engaged in the practice of supplying to their salesmen sections of tires, which purport to be taken from casings recapped by respondents, for display by such salesmen to prospective purchasers as indicative of the quality of their recapped tires. Such sections showed a quality of original casing or carcass incomparably superior to the carcasses of the recapped tires actually sold and delivered.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing the purchase of their recapped tires, respondents have engaged in the practice of making representations and claims to prospective commission salesmen of said tires, with respect to the quality thereof, the sources from which respondents obtained their casings for recapping, knowing and intending that such misrepresentations would be repeated, as in fact they were, by such salesmen in connection with the sale of said tires, and with respect to the possible earnings or profits of those selling said tires on commission. Such representations were made by means of letters sent by respondents, and by verbal statements of their "sales managers" to such salesmen.

Among and typical of said representations and claims so made in letters to prospective salesmen are the following:

* * * quality merchandise at prices that cannot be equalled elsewhere.

A recapped tire is manufactured with a used tire casing which has been worn smooth. This casing is carefully inspected and expertly repaired to insure satisfactory service. The tread * * * will give satisfactory service.

* * * a tire which * * * under average circumstances will give real satisfaction.

* * * as they are in need of quality products you really have something to offer these people.

* * * we give for example that your total sales for one week were \$450.00. This would give you commissions earned—a total of \$87.50 on \$450.00 business. We use these figures to illustrate the earning possibilities of our line as these figures have been the average sales for our representatives.

Representations made verbally to prospective salesmen by respondents' "sales managers" were to the effect that all respondents' tires were originally of the well known Goodyear, Goodrich, and Firestone manufacture; that the United States Army leased tires from these manufacturers, and used them for 90 days, and that these tires were those recapped and sold by respondents; that large taxicab companies did not use tires after the treads were slightly worn and that these slightly worn tires were those recapped and sold by respondents.

PAR. 10. Through the use of the aforesaid statements and representations made by means of letters to prospective salesmen, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that the said tires were of good quality and would give good and satisfactory service and satisfaction to users thereof, and that the average net earnings and profit consistently made by respondents' active, full-time salesmen in the ordinary course of business, under normal conditions and circumstances, was \$87.50 per week.

PAR. 11. The aforesaid claims and representations as set forth in paragraphs 9 and 10 hereof are false and misleading. In truth and in fact, respondents' tires are not of good quality but of most inferior quality. They do not give satisfactory service in use, and satisfied purchasers thereof are but few. The casings recapped by respondents included the original products of many manufacturers. The United States Army does not lease tires. Those recapped by respondents were not those which had been used only for 90 days by the United States Army, or by taxicab companies only until the treads were slightly worn. Respondents acquired the old casings principally from dealers in junk and old tires. The average net earnings and profits consistently made by respondents' active, full-

time salesmen in the ordinary course of business, under normal conditions and circumstances, was much less than \$87.50 per week.

PAR. 12. The use by respondents of the foregoing false and misleading designations, representations, and claims, with respect to said tires, has had, and now has, the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such claims, representations, and designations are true and to induce them to purchase said tires on account thereof. The use by respondents of the foregoing false and misleading designations, representations, and claims with respect to said tires and the average earnings of respondents' salesmen has had, and now has, the capacity and tendency to, and does, mislead and deceive prospective salesmen of said tires into the erroneous and mistaken belief that such claims, representations, and designations are true and to induce them to undertake the sale of said tires on account thereof. Respondents' said acts and practices have placed in the hands of salesmen, engaged in the sale of said tires to the purchasing public, means and instrumentalities for misleading and deceiving the public in the particulars aforesaid.

PAR. 13. The aforesaid acts and practices, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 20, 1942, issued its complaint against the respondent, American Industrial Rubber Co., a corporation, trading as Nu-Tred Tire Agency, Champion Rubber Co., L. & S. Tire Distributors, and Harvester Tire Sales, and against the respondents, Harold Trilling, Manny G. Tenenbaum, Olin K. Lewis, and E. F. Smith, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Service of the complaint was obtained upon all of the respondents, except respondent E. F. Smith. As used hereinafter, the term "respondents" therefore will not include E. F. Smith unless the contrary is indicated. After the filing by respondents, American Industrial Rubber Company, Harold Trilling, and Manny G. Tenenbaum, of an answer 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 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 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, American Industrial Rubber Co., is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 4405 South La Salle Street, Chicago, Ill. The corporation has at times traded and done business under various trade names in addition to its corporate name, including the names Nu-Tred Tire Agency, Champion Rubber Co., L. & S. Tire Distributors, and Harvest Tire Sales.

Respondent Harold Trilling is a stockholder and director of the respondent corporation and is also its general manager. Respondent Manny G. Tenenbaum is the sales manager of the respondent corporation. These two individuals formulate the policies and direct, control, and dominate the business practices of the corporate respondent. Respondent Olin K. Lewis acts in the capacity of regional sales manager for the corporation, being authorized to conduct business for the corporation under certain of the various trade names referred to above and having general supervision over sales made in his territory. Respondent Lewis, in addition to making sales personally of the products of the respondent corporation, procures subagents and other salesmen to sell such products and receives a commission upon all sales made by such subagents and other salesmen. All of the respondents have acted in concert and cooperation with one another in carrying on the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for some 3 years last past have been, engaged in the business of purchasing old automobile tires, placing a new outer wearing surface upon such tires by the process known as "recapping," and then selling and distributing such "recapped" tires. In the course and conduct of their business respondents cause, and have caused, their recapped tires, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and have

maintained, a course of trade in their recapped tires in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their recapped tires, the respondents have made numerous representations and claims with respect to the character, utility, and merit of their tires, and with respect to a purported guarantee of such tires, such representations and claims having been made by means of advertising circulars, price lists, order blanks, and other printed matter distributed to prospective salesmen, salesmen, and dealers, and which representations and claims were used by such salesmen and dealers in soliciting the sale of respondents' tires. Among and typical of such representations and claims are the following:

* * * You can pay more, but you cannot buy a better tire * * *
(Com. Ex. No. 1)

Solid, Carefully Tested Casings. (Com. Ex. No. 1)

* * * manufactured by modern, improved methods, * * * expert workmanship, high quality carefully inspected and expertly repaired casings. A leader in the field of price and quality. (Com. Ex. No. 1)

* * * heavy duty high quality casings which have been carefully tested and expertly repaired.

* * * careful and cautious examinations of each casing insures trouble free service. * * * (Com. Ex. No. 1)

The tires listed in this order blank are high quality recaps * * * All tires have been carefully selected and expertly repaired by skilled workmen. (Com. Ex. No. 7)

SIX MONTH GUARANTEE

These Champion Standard Recapped Tires are unconditionally guaranteed for 6 months. Any tire failing to give satisfactory service within this time, regardless of cause, will be replaced at one half of list price. (Com. Ex. No. 1)

GUARANTEE

All Champion Custom Built Passenger Car Recap Tires carry a 9 month unconditional guarantee. Any tire failing to give satisfactory service regardless of cause, within this time, will be replaced at one half the list price. (Com. Ex. No. 1)

GUARANTEE

Super Service Recapped Truck Tires are guaranteed for 90 days of satisfactory service. Any tire failing to give satisfactory service regardless of cause within this time, will be replaced at one half of the list price. (Com. Ex. No. 1)

GUARANTEE

Double Duty Truck Tires are guaranteed for 6 months of satisfactory service. Any tire failing to give satisfactory service regardless of cause within this time, will be replaced at one half of the list price. (Com. Ex. No. 1)

The L. & S. Tire Distributors, of Chicago, Illinois hereby warrant to the above purchaser that the materials and labor incorporated into the tire listed above are of such quality that the tire may be expected to render service for a minimum period of nine (9) months from the date of purchase for passenger car service, or six (6) months from the date of purchase for commercial car service, provided same is used under usual conditions, in such respective service; and the L. & S. Tire Distributors warrant the tire to give the purchaser satisfactory service under usual conditions of wear and tear except as hereinafter stated during such respective minimum periods of time.

If the tire fails to give the purchaser satisfactory service under any usual conditions of wear and tear except as hereinafter stated, the L. & S. Tire Distributors agree under this warranty and adjustment to replace such tire at one half ($\frac{1}{2}$) the then prevailing list price.

This warranty and adjustment agreement does not cover punctures, tires ruined in running flat, tires injured or destroyed by fire, wrecks, or collision, tires cut by chains or by obstructions on vehicle, theft, tubes used in any form, or tires used on taxi cab or on common carrier bus service. (Com. Ex. No. 2)

PAR. 4. Through the use of these statements and representations, and others of a similar nature, the respondents have represented, directly or by implication, that their recapped tires are of unusually high quality and will render satisfactory service over extended periods of time; that only those tire casings are used by respondents for recapping purposes which are of high quality and free from any serious defect; that before any casings are used by respondents for recapping they are carefully examined, tested, and repaired; that respondents' tires are guaranteed to render satisfactory service for 6 months or some other designated period of time; and that only in exceptional or rare instances will such tires fail to render satisfactory service during the period of time referred to in respondents' guarantee.

PAR. 5. The Commission finds from the evidence that these representations and claims are false, deceptive, and misleading. Respondents' recapped tires are not of high quality but, generally speaking, are of decidedly inferior quality. The tire casings or carcasses used by respondents for recapping purposes are usually obtained from peddlers and junk dealers, and in many instances are wholly unfit for recapping purposes, being old, badly worn, and weak, and frequently having large cracks therein, as well as other serious defects. It is apparent from the record that respondents make no serious effort to inspect or test casings for their recapping suitability before purchasing them and that many of the casings used are beyond repair. The uncontradicted expert testimony is that no satisfactory recapping job can be performed upon a casing which is not sound and free of all serious defects. Numerous instances are disclosed in which respondents' tires failed to give satisfactory service, in some cases the tires lasting only a few weeks or even only a few days before

blow-outs occurred. In many cases the mileage obtained from the tires was in fact negligible.

Not only were prospective dealers and members of the purchasing public deceived as a result of respondents' representations; the record is replete with evidence of instances in which prospective salesmen were deceived and were thereby led to undertake the sale of respondents' tires, only to discover later that the tires delivered in response to orders obtained by them were practically worthless.

The purported guarantee furnished by respondents with their tires was not in fact a guarantee, but was merely an agreement on the part of respondents to supply another tire at half price if the original tire did not render satisfactory service for the designated period of time. Inasmuch as practically all of respondents' tires appear to have been of very inferior quality, the supplying of a second tire was of little or no practical benefit to the purchaser, particularly in view of the fact that the purchaser was compelled to pay an additional sum of money in order to obtain the second tire.

PAR. 6. A further practice in which respondents engaged was that of supplying to their salesmen, for display to prospective purchasers, cross sections of tires purporting to be samples of respondents' products; that is, to be truly representative of the casings used by respondents for recapping purposes. Such cross sections were not in fact representative of the casings actually used by respondents but were far superior to such casings.

PAR. 7. The Commission finds further that the acts and practices of the respondents, as herein set forth, have the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the nature, quality, and durability of respondents' tires and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondents' tires as a result of the erroneous and mistaken belief engendered by such acts and practices. Respondents' acts and practices also have the tendency and capacity to mislead and deceive a substantial number of prospective salesmen of automobile tires and to cause such persons to undertake the sale of respondents' tires in the mistaken belief that respondents' representations were true.

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 certain of the respondents, 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 respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, American Industrial Rubber Co., a corporation, trading as Nu-Tred Tire Agency, Champion Rubber Co., L. & S. Tire Distributors, and Harvester Tire Sales, or trading under any other name, its officers, and Harold Trilling, Manny G. Tenenbaum, and Olin K. Lewis, individually, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' recapped automobile tires in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to respondents' sales agents or representatives, for display to prospective purchasers, samples purporting to represent the tires sold by respondents, when such purported samples are not in fact truly representative of respondents' products.

2. Representing, directly or by implication, that only those tire casings are used by respondents for recapping purposes which are of high quality and free from serious defects.

3. Representing, directly or by implication, that tire casings used by respondents for recapping purposes are carefully examined, tested, or repaired, when such is not the fact.

4. Representing, directly or by implication, that respondents' tires are "guaranteed" for 6 months, or any other designated period of time, when the purported guarantee is in fact only an agreement by respondents to supply a second tire at half price should the original tire prove defective.

5. Representing, directly or by implication, that it is only in exceptional or rare instances that respondents' tires fail to render satisfactory service.

6. Representing, directly or by implication, that respondents' tires are of high quality, or that they will render satisfactory service,

Order

36 F. T. C.

when such tires are in fact of inferior quality and will not render such service.

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.

Service of the complaint not having been obtained upon the respondent, E. F. Smith,

It is further ordered, That this proceeding be closed as to the said E. F. Smith, without prejudice to the right of the Commission, should the facts so warrant, to reopen the case and resume trial thereof in accordance with its regular procedure.

Complaint

IN THE MATTER OF

ALFRED JOHNSON SMITH, PAUL SMITH, AND ARTHUR SMITH, DOING BUSINESS AS JOHNSON SMITH & COMPANY

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

Docket 4778. Complaint, June 29, 1942—Decision, Mar. 3, 1943

Where three individuals, engaged in interstate sale and distribution of various articles, including watches—

Represented certain watches in their catalogues as "Railroad Watches" and "Railroad Type Watches," with, in some cases, the outline of a locomotive stamped on the back of the watch;

Notwithstanding the fact that said articles were in no sense railroad watches, which—known and designated as such by watch makers and the public generally—possess certain distinctive features in design and workmanship and meet high standards and stringent tests as to accuracy and dependability; possessed none of such distinctive mechanical features, but were of inferior construction; and were not comparable with railroad watches as to accuracy and dependability;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and quality of said watches, thereby causing its purchase thereof because of such mistaken belief:

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

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

Mr. L. E. Creel, 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 Alfred Johnson Smith, Paul Smith and Arthur Smith, copartners, doing business as Johnson Smith & 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, Alfred Johnson Smith, Paul Smith and Arthur Smith, are copartners, doing business as Johnson Smith & Co., with their office and principal place of business located at 6615 East Jefferson Avenue, Detroit, Mich.

Complaint

36 F. T. C.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the sale and distribution of watches and other articles of merchandise. Respondents cause their said merchandise, when sold by them, to be transported from their aforesaid place of business in the State of Michigan to purchasers thereof located at points 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 merchandise 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 their aforesaid business and for the purpose of inducing the purchase of their merchandise, the respondents have made many false, misleading, and deceptive statements and representations relative to their said watches in circulars, pamphlets, letters, and other written or printed matter and in advertisements inserted in newspapers, magazines, and trade journals, all of which are circulated and distributed among prospective purchasers. Among and typical of such false and misleading and deceptive statements and representations are the following:

On Time, All the Time with the Railroad Watch.

An Excellent Pocket Watch for \$1.75.

An American made pocket watch with two-tone dial and locomotive design back—fully guaranteed for only \$1.75.

The Railroad Watch is regular 16 size, guaranteed to keep accurate time. * * *

RAILROAD TYPE WATCH

An accurate, dependable watch selling for a remarkably low price and modeled after the famous RAILROAD WATCHES.

RAILROAD TYPE WATCH \$1.95

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning, not specifically set out herein, respondents represent, and have represented, directly or by implication, that said watches are genuine "Railroad" watches. "Railroad" watches are known and understood by the purchasing public to be watches possessing the accuracy and dependability required for use by railroad employees, and are considered to be especially valuable and desirable. Respondents enhance the implication that said watches are genuine "Railroad" watches by pictorial representations showing said watches with large hands, large distinct hour numerals, and in the Railroad Type Watch small minute numerals, which features are generally found in genuine "Railroad" watches.

In addition, such pictorial representations show the outlines of a locomotive stamped on the back of the watch.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' watches are not genuine "railroad" watches, and possess none of the essential features and construction required of watches to be used by railroad employees. They are of the cheapest construction, and only simulate in appearance genuine "railroad" watches.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said watches, disseminated as aforesaid, has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' watches.

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 meaning and intent of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 29, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Alfred Johnson Smith, Paul Smith, and Arthur Smith, copartners, doing business as Johnson Smith & 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 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 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, Alfred Johnson Smith, Paul Smith, and Arthur Smith, are copartners, doing business, under the name Johnson Smith & Co., with their office and principal place of business located at 6615 East Jefferson Avenue, Detroit, Mich. Respondents are now and for a number of years last past have been engaged in the sale and distribution of various articles of merchandise, including watches.

PAR. 2. Respondents cause and have caused their merchandise, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents distribute among prospective purchasers located at various points throughout the United States catalogs describing and depicting the various articles sold by them. Among the articles described in these catalogs are certain watches, described by respondents as "Railroad Watches" and "Railroad Type Watches." Some of the pictorial representations accompanying these descriptions show the outlines of a locomotive stamped on the back of the watch.

The evidence shows that there are certain types of watches known and designated by watch makers and by the public generally as railroad watches, such watches possessing certain distinctive features in design and workmanship, and meeting certain high standards and stringent tests as to accuracy and dependability. Only watches meeting such requirements may be used by railroad employees engaged in the operation of trains.

Respondents' watches are in no sense railroad watches. They are of inferior construction and possess none of the distinctive mechanical features required in genuine railroad watches. They are not comparable with railroad watches as to accuracy or dependability. The Commission therefore finds that the terms "Railroad Watch" and "Railroad Type Watch," as used by respondents to designate and describe their watches, are erroneous and misleading.

PAR. 4. The Commission finds further that the use by respondents of these erroneous and misleading representations has the tendency

and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and quality of respondents' watches, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' watches 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 in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission therefore 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, Alfred Johnson Smith, Paul Smith, and Arthur Smith, individually, and trading as Johnson Smith & Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Railroad" or the words "Railroad Type," or any other word or words of similar import, to designate or describe any watch which is not in fact a railroad watch possessing the accuracy and dependability required of watches used by railroad employees engaged in the operation of trains.

2. Representing in any manner that respondents' watches are railroad watches when such is not the fact.

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

IN THE MATTER OF
**WISCONSIN DELUXE DOLL & DRESS COMPANY, DOING
BUSINESS AS WISCONSIN DELUXE CORPORATION**

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

Docket 4830. Complaint, Sept. 2, 1942—Decision, Mar. 5, 1943

Where a corporation, engaged in competitive interstate sale and distribution of blankets, clocks, tableware, and numerous other articles—

Supplied its customers with assortments of its said merchandise, together with Bingo sets, through use of which the fortunate participant who was able to mark off on his card a vertical, horizontal or diagonal line made up of five numbers drawn by operator received one of said articles being thus distributed, value of which was in excess of money paid, others receiving nothing; and

Thereby supplied to and placed in the hands of its customers or operators means of conducting lotteries in the sale of its merchandise in accordance with such plan involving sale of a chance to procure an article at much less than its normal retail price, contrary to an established public policy of the United States Government, and in competition with many who do not use any sales method contrary to public policy;

With the result that many persons were attracted by its sales plan and the element of chance involved therein, and were thereby induced to buy and sell its merchandise in preference to that of its aforesaid competitors; and with tendency and capacity, because of said game of chance, to divert trade unfairly to it from them:

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

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

Mr. Harvey C. Hartwig, 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 Wisconsin Deluxe Doll & Dress Co., a corporation, trading as Wisconsin Deluxe Corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the

public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wisconsin DeLuxe Doll & Dress Co., is a corporation, trading as Wisconsin DeLuxe Corporation, with its principal office and place of business located at 1902 North Third Street, Milwaukee, Wis. Respondent is now, and has been for some time last past, engaged in the sale and distribution of blankets, clocks, tableware, kitchenware, luggage, fishing tackle, lamps, electric fixtures, and numerous household articles and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from its aforesaid place of business in Milwaukee, Wis., to purchasers thereof at their respective points of location in the various States of the United States other than the State of Wisconsin, and in the District of Columbia. There is now and has been for some time last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is and has been in competition with other corporations and with individuals and 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 said business as described in paragraph 1 hereof, respondent, in selling and distributing its said merchandise, has supplied its customers with assortments of said merchandise, together with certain paraphernalia known as Bingo sets, by means of which said merchandise is sold and distributed to the purchasing or consuming public in a manner which involves the operation of a game of chance, gift enterprise or lottery scheme. One of said Bingo sets consists of a large master card or tally sheet containing 75 numbers, a number of smaller Bingo cards on each of which appears 24 numbers arranged in a square, which numbers correspond to the numbers on the tally sheet, and a number of small wooden squares on each of which appears one of the numbers from 1 to 75. Each of said Bingo cards has a different group of numbers thereon, and one of said cards appears substantially as follows:

Complaint					36 F. T. C.
Nos. 1 to 15	Nos. 16 to 30	Nos. 31 to 45	Nos. 46 to 60	Nos. 61 to 75	
B	I	N	G	O	
1	16	33	46	66	
6	27	35	55	61	
5	23	Free O Free	58	68	
13	21	37	53	67	
2	20	43	56	63	
START WITH LETTER O IN CENTER, FREE 5 NUMBERS ACROSS ANY LINE WINS 12 DIFFERENT WAYS TO BINGO					2

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: Respondent's customer, or someone designated by such customer, acts as an operator in the sale or distribution of said merchandise. The operator of the Bingo set places in the hands of each participant one of the said Bingo cards, and each participant pays the operator a designated sum of money for the privilege of participating in the distribution of each of said articles of merchandise. The operator then places the said wooden squares in a container and so mixes them that the numbers thereon are concealed until one of said wooden squares is withdrawn from the container by the operator. In the center of the participant's Bingo card is a square marked "FREE" and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds with the drawing of numbers from the aforesaid mixing container and calls out the number appearing on each wooden square as said square is withdrawn from said container and the person on whose card such number appears places one of said markers over such number. This same procedure is followed until one of the participants has succeeded in marking five numbers on said card, which numbers form a straight line across the card, either horizontally, vertically, or diagonally. The sequence or distribution of the numbers which control the plac-

ing of the markers is determined wholly by chance. Upon marking the last of said five numbers the participant calls out the word "Bingo." The marked numbers are called out by the operator who checks the same with the numbers on said tally sheet, and if such numbers have been correctly marked the participant is entitled to and receives one of said articles of merchandise as a prize. The other participants receive nothing for their money. This same procedure is repeated until all of said articles of merchandise or prizes have been distributed. The articles of merchandise therein vary but each of said articles of merchandise is of greater value than the amount paid by each participant for participation in the distribution of said merchandise as above described. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent has sold and distributed various Bingo sets and other devices for use in the sale and distribution of its merchandise to the consuming public by lot or chance, but the principle of operation in connection with each of said Bingo sets or devices is similar to the one hereinabove described, varying only in detail.

PAR. 3. The persons who have purchased respondent's said assortments of merchandise, together with said Bingo sets, either directly or indirectly, have used said Bingo sets in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others, the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan or method hereinabove described. The use by respondent of said sales plan or method in the sale and distribution of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

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, do not use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its merchandise, and by the element of chance involved therein, and have been and are induced to buy and sell respondent's

Findings

36 F. T. C.

merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or method by respondent because of said game of chance has the tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent sales plans or methods.

PAR. 5. The aforesaid acts and practices of respondent, as hereinabove alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission 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 2, 1942, issued and thereafter served its complaint in this proceeding upon respondent, Wisconsin Deluxe Doll & Dress Co., a corporation, also trading as Wisconsin Deluxe Corporation, charging it with the use of unfair methods of competition and unfair acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Wisconsin Deluxe Doll & Dress Co., is a corporation, trading as Wisconsin Deluxe Corporation, with its principal office and place of business located at 1902 North Third Street, Milwaukee, Wis. Respondent is now, and has been for some time last past, engaged in the sale and distribution of blankets, clocks,

tableware, kitchenware, luggage, fishing tackle, lamps, electric fixtures, and numerous household articles and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be transported from its aforesaid place of business in Milwaukee, Wis., to purchasers thereof at their respective points of location in the various States of the United States other than the State of Wisconsin, and in the District of Columbia. There is now and has been for some time last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is, and has been, in competition with other corporations and with individuals and 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 said business as described in paragraph 1 hereof, respondent, in selling and distributing its said merchandise, has supplied its customers with assortments of said merchandise, together with certain paraphernalia known as Bingo sets, by means of which said merchandise is sold and distributed to the purchasing or consuming public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme. One of said Bingo sets consists of a large master card or tally sheet containing 75 numbers, a number of smaller Bingo cards on each of which appears 24 numbers arranged in a square, which numbers correspond to the numbers on the tally sheet, and a number of small wooden squares on each of which appears one of the numbers from 1 to 75. Each of said Bingo cards has a different group of numbers thereon, and one of said cards appears substantially as follows:

Findings

36 F. T. C.

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

B	I	N	G	O
1	16	33	46	66
6	27	35	55	61
5	23	Free O Free	58	68
13	21	37	53	67
2	20	43	56	63
START WITH LETTER O IN CENTER, FREE 5 NUMBERS ACROSS ANY LINE WINS 12 DIFFERENT WAYS TO BINGO				2

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: Respondent's customer, or someone designated by such customer, acts as an operator in the sale or distribution of said merchandise. The operator of the Bingo set places in the hands of each participant one of said Bingo cards, and each participant pays the operator a designated sum of money for the privilege of participating in the distribution of each of said articles of merchandise. The operator then places the said wooden squares in a container, and so mixes them that the numbers thereon are concealed until one of said wooden squares is withdrawn from the container by the operator. In the center of the participant's Bingo card is a square marked "FREE" and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds with the drawing of number from the aforesaid mixing container and calls out the number appearing on each wooden square as said square is withdrawn from said container, and the person on whose card such number appears places one of said markers over such number. This same procedure is followed until one of the participants has succeeded in marking five numbers on said card, which numbers form a straight line across the card, either horizontally, vertically, or diagonally. The sequence or distribution of the num-

bers which control the placing of the markers is determined wholly by chance. Upon marking the last of said five numbers, the participant calls out the word "Bingo." The marked numbers are called out by the operator, who checks the same with the numbers on said tally sheet, and if such numbers have been correctly marked, the participant is entitled to and receives one of said articles of merchandise as a prize. The other participants receive nothing for their money. This same procedure is repeated until all of said articles of merchandise or prizes have been distributed. The articles of merchandise therein vary, but each of said articles of merchandise is of greater value than the amount paid by each participant for participation in the distribution of said merchandise as above described. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent has sold and distributed various Bingo sets and other devices for use in the sale and distribution of its merchandise to the consuming public by lot or chance, but the principle of operation in connection with each of said Bingo sets or devices is similar to the one hereinabove described, varying only in detail.

PAR. 3. The persons who have purchased respondent's said assortments of merchandise, together with said Bingo sets, either directly or indirectly, have used said Bingo sets in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise, in accordance with the sales plan or method hereinabove described. The use by respondent of said sales plan or method in the sale and distribution of its merchandise, and the sale of said merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public, in the manner above found, involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above found, do not use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its merchandise, and by the element of

Order

36 F. T. C.

chance involved therein, and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or method by respondent because of said game of chance has the tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent sales plans or methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Wisconsin Deluxe Doll & Dress Co., its officers, representatives, agents, and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of novelty or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing blankets, clocks, lamps, kitchenware, fishing tackle, household goods, or any other merchandise, accompanied by a Bingo set or any similar device to be used, or which may be used, by the purchaser of said merchandise, or others, as a means of disposing of said merchandise by means of a game of chance, gift enterprise or lottery scheme.

2. Supplying to or placing in the hands of others, Bingo sets or similar devices, either with assortments of blankets, clocks, lamps, kitchenware, fishing tackle, household goods, or any other merchan-

250

Order

dise, or separately, which said Bingo sets or similar devices are to be used or may be used in selling or distributing said merchandise to the public.

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

It is further ordered, That 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

G. S. PROPER, DOING BUSINESS AS ALBEE STUDIO

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

Docket 4871. Complaint, Nov. 19, 1942—Decision, Mar. 5, 1943

Where an individual, engaged in the District of Columbia in interstate sale and distribution of photographs, and particularly tinted or colored photographs and enlargements and miniatures, and in making various advertising and sales representations pertaining thereto by means of printed coupons distributed generally through house-to-house canvassers who represented as a "Special Advertising Offer," good for a limited time only, the sales offer set forth thereon, under which one photograph or miniature could be secured for the amount stated; he deriving his profits from the sale of additional pictures—

- (a) Made use in said various coupons of words and terms "Goldtone Portrait Colored in Oil," "Goldtone Silk Vitiva," and "Hand Colored in Oil" in describing its photographs and miniatures; and represented, through its canvassers—who called attention to the soft and beautiful luster of the pictures, represented as the results of their genuine "Goldtone" finish—that the products for which coupons were being sold were really oil paintings and portraits;

The facts being that said products were not the result of the more expensive "Goldtone" process involving the use of salts of chloride of gold with its much warmer tones, but were merely sepia or brown-tone prints; so-called "Silk Vitiva" products were not composed of, or printed on, silk or any substance containing silk, but simply printed on paper having a smooth, glossy surface, and were, further, in no sense genuine portraits or paintings done or colored in oil by the skill and brush of a painter, as implied, but merely slightly tinted or colored photographic prints;

- (b) Set forth on said coupons such legends as "Regular studio value \$5.00" in connection with the dollar offer for "One Goldtone Portrait Colored in Oil" and "Regular Studio value \$10.00" in connection with the \$2.50 offer for "One Goldtone Silk Vitiva Miniature," and in smaller type, "Good until _____". Note: For time extension mail offer to studio with self-addressed stamped envelope"; and through its agents placed particular emphasis upon the fact that aforesaid products were being obtained for \$1.00 and \$2.50, respectively, and that special prices would be made for additional pictures ordered;

The facts being that said pictures did not have any such values as \$5.00 and \$10.00 and had never sold for said amounts, and purported limited offers were not actually terminated or withdrawn as stated, but in truth comprised part of a continuous scheme of solicitation in the regular course of business;

- (c) Did not direct, through their sales agents, attention to the less conspicuous type appearing on the margin of coupons to the effect that there was only one advertising coupon to a person or family "unless additional portraits are ordered," but sold as many coupons as they were able to, giving the

Complaint

customer to understand that each coupon thus purchased and paid for was good for one picture and would be honored accordingly at said individual's studio, and promptly assuring the customer, in the event he happened to notice the aforesaid small type provision, that the same might be disregarded; and thereby led public mistakenly to believe that where more than one coupon had been sold to a family or to its members each would be honored, and that restrictions, if any, had been waived;

(d) Refused, as a rule, in cases in which a customer did not order additional pictures, to honor his certificate and make a single one, notwithstanding fact that representative had already been paid in full or in part for the picture, and in case customer brought up matter of prior payment, advised him that the money was kept by his sales agent and that he got none of it, and in the event he did occasionally make a single picture, in case of a coupon bought for Christmas or some other special date or event, did so at his own convenience and subsequent to the date for which it had been ordered; and

(e) Refused, on occasion, in cases in which a customer had been sold more than one coupon, to accept proofs of the sittings or to make any picture unless additional pictures were ordered;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said products:

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

Mr. Marshall Morgan for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by authority vested in it by said act, the Federal Trade Commission, having reason to believe that C. S. Proper, individually, and trading as Albee Studio, 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, G. S. Proper, is an individual, trading as Albee Studio, with his principal office and place of business located at 1426 G Street NW., Washington, D. C.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of photographs, and particularly tinted or colored photographs and enlargements and miniatures of photographs, in commerce between and among the various States of the United States and the District of Columbia.

In the course and conduct of the said business, the said respondent causes his products when sold to be transported from his place of

Complaint

36 F. T. C.

business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce, particularly in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

PAR. 3. In the course and conduct of his said business, in connection with and for the purpose of inducing the sale of his said products in commerce, respondent has made and is now making various false and deceptive advertising and sales representations concerning his said products.

In printed coupons of general distribution, disseminated by respondent through his salesmen and canvassers, by United States mails, and by other means, respondent has made the following among other representations:

One Goldtone Portrait Colored in Oil

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Unmounted Size 7 x 10

For \$1.00 Only

Pay Representative \$1.00 for this offer. No balance at studio.

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This offer obtained through representative only. Regular Studio Value \$5.00

One Goldtone Silk Vitiva Miniature

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Complete in frame Hand colored in oil.

For \$2.50 Only

Pay Representative \$2.00 for this offer. Pay 50¢ balance at studio.

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This offer obtained through representative only. Regular Studio Value \$10.00.

In smaller type than that employed in representing the type and character of the product and its price, the following, among other statements and representations, appear as printed matter in said coupons:

Good until * * * Note: For time extension mail offer to studio with self-addressed stamped envelope.

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* * * Only one coupon to a family unless additional portraits are ordered.

PAR. 4. Respondent's plan of operation is in substance as follows:

House-to-house salesmen or canvassers, equipped with attractive sample photos, and with coupons, contact members of the purchasing

public at their homes or places of business. Said sales offer is here presented as a special "advertising offer" made in connection with a special advertising campaign and good only for a limited time. Respondent's said salesmen call attention to the soft and beautiful luster of the said pictures, which it is represented, results from their being genuine Goldtone finish.

Said sales agents further in sales talks made to customers and prospective customers represent and have represented, and give and have given customers and prospective customers to understand, that the product for which coupons are being sold is really an oil painting, a portrait, a product painted in oil from a photographic base, a genuine work of art produced by the hand and brush of a painter.

Said sales agents further in their said sales talks place particular emphasis upon the fact that a \$5 "Goldtone Portrait Colored in Oil" is being obtained for only \$1; and that a genuine "Goldtone Silk Vitiva Miniature" of the value of \$10 is being obtained by the customer for only \$2.50, and that special prices will be made for additional pictures ordered.

Upon purchasing a coupon, or giving an order for a "portrait" or "miniature," the customer either pays the entire price originally asked at the time the order is given, or else pays a part of said price, the balance to be paid thereafter at respondent's studio.

PAR. 5. At no time during the progress of respondent's said sales talks to customers and prospective customers is attention directed to less conspicuous type appearing on the margin of coupons in which it is variously stated that there is "Only one Albee advertising coupon to a person," and "Only one coupon to a family unless additional portraits are ordered." Many, if not most, of said "offers" by respondent's said sales agents are made at the homes and dwelling places of customers, where there are present various members of a family circle. On such occasions respondent's said sales agents sell, and collect money for, as many coupons as they are able to place in one family. The customer is given to understand that each coupon so purchased and paid for is good for at least one picture, and will be so honored at respondent's studio. In the event a customer happens to note the smaller-type provision on a coupon to the effect that only one coupon may be sold to a family, respondent's sales agent promptly advises that such provision may be disregarded by the customer. Respondent's said agents sell, and have sold, coupons to as many members of a family as possible, and likewise sell, and have sold to individuals in any household, office, or other address, as many coupons as they are able to dispose of at said household, office, or other address. Upon the consummation of the sale of the coupon

Complaint

36 F. T. C.

respondent's sales agent affixes his signature to the coupon, thus endorsing or certifying to its validity at the studio.

PAR. 6. When the customer presents a coupon at the studio for a sitting, he or she must pay any further sum stated in the coupon to be due. When the customer has been subjected to the appropriate number of sittings required to obtain a satisfactory negative or negatives, proofs of the same are thereupon mailed to the customer from respondent's studio. These proofs are accompanied by an instruction card advising that proofs must be kept out of strong light, that they have not been retouched, and that all lines, shadows, and blemishes can be removed therefrom. The customer is further advised in this card that all proofs must be returned personally within 15 days, that delivery of same will not be accepted by mail or through third parties, and that minors' proofs must be returned by parents. It is stated in italics on this card that "additional pictures may be obtained in conjunction with this offer at special prices." In the event a customer does not call at respondent's studio within a reasonable time for completed pictures, a further circular card is addressed to the customer, urging immediate attention to the matter.

Respondent's profits on his business are derived from the sale of additional pictures. When a customer for any reason does not order additional pictures, but decides to take just the one picture stipulated for in the coupon offer, respondent retains any money theretofore collected, and, as a rule, refuses to honor his certificate, and refuses to make a single picture. This action on the part of respondent is taken despite the fact that respondent's sales representative has already been paid in full for the picture, or has collected part payment thereon. Should the customer bring up the matter of prior payment for the picture, the customer is informed that that money was kept by respondent's sales agent, and that respondent did not get any of it. Similarly, where a customer has been sold more than one coupon, and respondent has collected therefor, respondent nevertheless refuses, and has refused, to accept proofs of said sittings, or to make any pictures thereof, unless additional pictures are ordered.

On other occasions where a coupon has been bought for use in having a picture made for some such anniversary as Christmas or for some other special date or event, respondent from time to time has refused to make said picture for said anniversary or event unless additional pictures are ordered, and should respondent, on occasion, finally make a single picture, respondent does so at his own convenience and subsequent to the date of the occasion for which the picture has been specially ordered.

PAR. 7. The aforesaid representations and implications made and employed by respondent are false, misleading, and deceptive in that:

The tinted or colored photographs produced by respondent are not genuine portraits or paintings done in oil, or colored in oil by the skill and brush of a painter as said representations imply. Said photographs or pictures, in truth and in fact, as produced and sold by respondent, are merely sepia or brown-tone prints produced from a photographic base and slightly tinted or colored thereafter.

The public is led to believe that where more than one coupon has been sold to a family or to members thereof each such coupon would be honored by respondent, when such is not the case, and that any restriction on more than one coupon to a family or household, if such existed, has been waived and set aside by the respondent by taking more than one order in a family or household and collecting the money therefor without advising such purchasers of the existence of any restriction; that in cases where one coupon has been bought for the production of only one picture the purchaser could secure the picture, one or more pictures, as desired, but was not required to purchase a number in excess of one in order to obtain a single picture.

The photographs or pictures represented as having so-called studio values of \$5 and \$10, respectively, have not had, and do not have or possess, any such values and have not been sold and are not currently sold by respondent for \$5 and \$10, respectively.

The offers that are represented as terminating or being limited to a certain date are not actually terminated or withdrawn at, or limited to, the time stated in any coupon. Said offers, in truth and in fact, comprise only a part of a continuous scheme of solicitation in the regular course and conduct of the business of respondent.

Customers believe that the pictures and miniatures advertised and sold by respondent as "Silk Vitiva" are composed of or printed on silk, when such is not the fact. Said pictures in fact are not produced or printed on silk or on any substance or product containing silk but, on the contrary, are merely printed on paper having a smooth, glossy surface.

PAR. 8. A genuine "Gold-Tone" print or picture is a product resulting from a process involving the use of a toning bath employing salts of chloride of gold. This process produces a much warmer tone than is true in the case of black and white or sepia, involves more labor and detail, comprehending the toning of a print or pictures a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures.

No chloride of gold salts are, or have been, used by respondent in connection with the developing, toning, or coloring of said so-called "Goldtone Portraits" and "Goldtone Silk Vitiva Miniatures." Said products are not genuine gold-tone pictures or miniatures, but, on the contrary, the toning process employed by respondent in producing them is an ordinary one, much less expensive, in universal use in the production of sepia or brown effects.

PAR. 9. The use by respondent of said false and misleading statements and representations in connection with the sale of the aforesaid products has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondent's coupons and pictures as a result of such belief.

PAR. 10. Said acts and practices of respondent as described herein 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 November 19, 1942, issued and served its complaint in this proceeding upon respondent, G. S. Proper, individually, and trading as Albee Studio, charging him with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 30, 1942, the respondent filed his answer, in which said answer he admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, G. S. Proper, is an individual trading as Albee Studio, with his principal office and place of business located at 1426 G Street NW., Washington, D. C.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of photographs, and

particularly tinted or colored photographs and enlargements and miniatures of photographs, in commerce between and among the various States of the United States and the District of Columbia.

In the course and conduct of the said business, the said respondent causes his products when sold to be transported from his place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States, particularly in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

PAR. 3. In the course and conduct of his said business, in connection with and for the purpose of inducing the sale of his said products in commerce among and between the various States of the United States, respondent has made and is now making various advertising and sales representations concerning his said products.

In printed coupons distributed generally by respondent through his salesmen and canvassers, by United States mails, and by other means, respondent has made the following, among other, representations:

One Goldtone Portrait Colored In Oil

* * * * *

Unmounted Size 7 x 10

For \$1.00 Only

Pay Representative \$1.00 for this offer. No balance at studio.

* * * * *

This offer obtained through representative only.

Regular Studio Value \$5.00

One Goldtone Silk Vitiva Miniature

* * * * *

Complete in frame Hand colored in oil.

For \$2.50 Only

Pay Representative \$2.00 for this offer. Pay 50¢ balance at studio.

* * * * *

This offer obtained through representative only.

Regular Studio Value \$10.00.

In smaller type than that employed in representing the type and character of the product and its price the following, among other statements and representations, appear as printed matter in said coupons:

Findings

36 F. T. C.

Good until ----- Note: For time extension mail offer to studio with self-addressed stamped envelope.

* * * Only one coupon to a family unless additional portraits are ordered.

PAR. 4. Respondent's plan of operation is in substance as follows:

House-to-house salesmen or canvassers, equipped with attractive sample photos and with coupons, contact members of the purchasing public at their homes or places of business. Said sales offer is here presented as a special "advertising offer" made in connection with a special advertising campaign and good only for a limited time. Respondent's said salesmen call attention to the soft and beautiful luster of the said pictures, which, it is represented, results from their being genuine gold-tone finish.

Said sales agents further, in sales talks made to customers and prospective customers, represent and have represented, and give and have given customers and prospective customers to understand, that the product for which coupons are being sold is really an oil pointing, a portrait, a product painted in oil from a photographic base, a genuine work of art produced by the hand and brush of a painter.

Said sales agents further in their said sales talks place particular emphasis upon the fact that a \$5 "Goldtone Portrait Colored in Oil" is being obtained for only \$1; and that a genuine "Goldtone Silk Vitiva Miniature" of the value of \$10 is being obtained by the customer for only \$2.50, and that special prices will be made for additional pictures ordered.

Upon purchasing a coupon or giving an order for a "portrait" or "miniature" the customer either pays the entire price originally asked at the time the order is given, or else pays a part of said price, the balance to be paid thereafter at respondent's studio.

PAR. 5. At no time during the progress of respondent's said sales talks to customers and prospective customers is attention directed to less conspicuous type appearing on the margin of coupons in which it is variously stated that there is "Only one Albee advertising coupon to a person" and "Only one coupon to a family unless additional portraits are ordered." Many, if not most, of said "offers" by respondent's said sales agents are made at the homes and dwelling places of customers, where there are present various members of a family circle. On such occasions respondent's said sales agents sell, and collect money for, as many coupons as they are able to place in one family. The customer is given to understand that each coupon so purchased and paid for is good for at least one picture and will be so honored at respondent's studio. In the event a customer happens

to note the smaller-type provision on a coupon to the effect that only one coupon may be sold to a family, respondent's sales agent promptly advises that such provision may be disregarded by the customer. Respondent's said agents sell, and have sold, coupons to as many members of a family as possible and likewise sell, and have sold to individuals in any household, office, or other address as many coupons as they are able to dispose of at said household, office, or other address. Upon the consummation of the sale of the coupon, respondent's sales agent affixes his signature to the coupon, thus endorsing or certifying to its validity at the studio.

PAR. 6. When the customer presents a coupon at the studio for a sitting, he or she must pay any further sum stated in the coupon to be due. When the customer has been subjected to the appropriate number of sittings required to obtain a satisfactory negative or negatives, proofs of the same are thereupon mailed to the customer from respondent's studio. These proofs are accompanied by an instruction card advising that proofs must be kept out of strong light, that they have not been retouched, and that all lines, shadows, and blemishes can be removed therefrom. The customer is further advised in this card that all proofs must be returned personally within 15 days, that delivery of same will not be accepted by mail or through third parties, and that minors' proofs must be returned by parents. It is stated in italics on this card that "additional pictures may be obtained in conjunction with this offer at special prices." In the event a customer does not call at respondent's studio within a reasonable time for completed pictures, a further circular card is addressed to the customer, urging immediate attention to the matter.

Respondent's profits on his business are derived from the sale of additional pictures. When a customer for any reason does not order additional pictures but decides to take just the one picture stipulated for in the coupon offer, respondent retains any money therefor collected and as a rule refuses to honor his certificate and refuses to make a single picture. This action on the part of respondent is taken despite the fact that respondent's sales representative has already been paid in full for the picture or has collected part payment thereon. Should the customer bring up the matter of prior payment for the picture, the customer is informed that that money was kept by respondent's sales agent and that respondent did not get any of it. Similarly, where a customer has been sold more than one coupon and respondent has collected therefor, respondent, nevertheless, on occasion refuses, and has refused, to accept proofs of said sittings or to make any picture thereof unless additional pictures are ordered.

On other occasions where a coupon has been bought for use in having a picture made for some such anniversary as Christmas or for some other special date or event, respondent from time to time has refused to make said picture for said anniversary or event unless additional pictures are ordered, and should respondent, on occasion, finally make a single picture, respondent does so at his own convenience and subsequent to the date of the occasion for which the picture has been specially ordered.

PAR. 7. The aforesaid representations and implications made and employed by respondent are false, misleading, and deceptive in that:

The tinted or colored photographs produced by respondent are not genuine portraits or paintings done in oil, or colored in oil by the skill and brush of a painter, as said representations imply. Said photographs or pictures, in truth and in fact, as produced and sold by respondent, are merely sepia or brown-tone prints produced from a photographic base and slightly tinted or colored thereafter.

The public is led to believe that where more than one coupon has been sold to a family or to members thereof each such coupon would be honored by respondent, when such is not the case, and that any restriction on more than one coupon to a family or household, if such existed, has been waived and set aside by the respondent by taking more than one order in a family or household and collecting the money therefor without advising such purchasers of the existence of any restrictions; that in cases where one coupon has been bought for the production of only one picture the purchaser could secure the picture, one or more pictures, as desired, but was not required to purchase a number in excess of one in order to obtain a single picture.

The photographs or pictures represented as having so-called studio values of \$5 and \$10, respectively, have not had, and do not have or possess, any such values and have not been, and are not currently, sold by respondent for \$5 and \$10, respectively.

The offers that are represented as terminating or being limited to a certain date are not actually terminated or withdrawn at, or limited to, the time stated in any coupon. Said offers, in truth and in fact, comprise only a part of a continuous scheme of solicitation in the regular course and conduct of the business of respondent.

Customers believe that the pictures and miniatures advertised and sold by respondent as "Silk Vitiva" are composed of, or printed on, silk, when such is not the fact. Said pictures in fact are not produced or printed on silk or on any substance or product containing silk but, on the contrary, are merely printed on paper having a smooth, glossy surface.

PAR. 8. A genuine "Gold-Tone" print or picture is a product resulting from a process involving the use of a toning bath employing

260

Order

salts of chloride of gold. This process produces a much warmer tone than is true in the case of black-and-white or sepia, involves more labor and detail, comprehending the toning of a print or picture a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures.

No chloride of gold salts are, or have been, used by respondent in connection with the developing, toning, or coloring of said so-called "Goldtone Portraits" and "Goldtone Silk Vitiva Miniatures." Said products are not genuine gold-tone pictures or miniatures; but, on the contrary, the toning process employed by respondent in producing them is an ordinary one, much less expensive, in universal use in the production of sepia or brown effects.

PAR. 9. The use by respondent of said false and misleading statements and representations in connection with the sale of the aforesaid products has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondent's coupons and pictures as a result of such belief.

CONCLUSION

The aforesaid acts and practices of respondent as described herein 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 the 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, G. S. Proper, individually, and trading as Albee Studio, 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 photographs, including tinted or colored photographs and enlargements or miniatures thereof, in commerce as com-

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

1. Representing, directly or by implication, that tinted or colored photographs, including enlargements and miniatures made from a photographic base are "oil paintings," or are hand-painted portraits, or are genuine works of art produced by the skill and brush of a painter.

2. Requiring holders of coupons which entitle such holders to receive one picture, miniature, or enlargement at a stipulated price to purchase additional pictures, enlargements, or miniatures as a condition to respondent's fulfillment of the undertaking specified in such coupons.

3. Permitting respondent's agents or salesmen to represent to prospective purchasers of coupons which entitle the holders thereof to a specified number of pictures, miniatures, or enlargements at a stipulated price that the respondent does not enforce the provisions written on such coupons relative to limiting the number thereof to one coupon per person and to one coupon per family unless additional pictures are ordered.

4. Attempting to enforce restrictions written into coupons offered for sale by respondent's agents, when respondent knows or has reason to believe that such agents represent to prospective purchasers that such restrictions are not enforced by the respondent and may be disregarded by prospective purchasers in purchasing such coupons.

5. Using the term "Silk Vitiva," or any other term containing the word "silk," to in any way describe or refer to pictures which are not in fact printed on silk.

6. Representing as the customary, regular, or studio prices for respondent's pictures, enlargements, or miniatures any prices or values which are in fact in excess of the prices at which said pictures, enlargements, or miniatures are customarily offered for sale and sold in the normal and usual course of respondent's business.

7. Representing through the medium of coupons, or in any other manner, that offers terminate on, or are limited to, a certain date, when such offers are not actually terminated or withdrawn at, or limited to, the date stated.

8. Using the expression "Gold-Tone" alone or in conjunction with any other word or words, to describe, designate, or indicate any sepia or other finish which is not the result of a toning or developing bath or process employing chloride of gold salts.

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
GREENING NURSERY COMPANY

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

Docket 3673. Complaint, Dec. 23, 1938—Decision, Mar. 10, 1943

Where a corporation, engaged in competitive interstate sale and distribution of fruit trees and other nursery products; to induce purchase thereof and salesmen and agents to sell its said products to the purchasing public—

Represented that it was the only nursery which used the bud-selection method of grafting in the propagation of fruit trees, and that fruit trees thus propagated could only be procured from it and its salesmen, through such statements in circulars, newspaper advertisements, and other publications as "Bud Selection, that remarkable, exclusive Greening feature!"; "For 26 years, Greening * * * have been propagating fruit trees by bud selection, exclusive, amazing, scientific discovery unduplicated in the field"; "Only Greening men can sell Bud Selected fruit trees"; and "Non-competitive field all to yourself";

The facts being that trees propagated by the bud-selection method of grafting are sold by many of its competitors; said method has been known from earliest times and was practiced in some form or other by practically all nurserymen; its methods varied from those followed by practically all commercial nurserymen only in the keeping of records of selected trees or limbs which were observed from year to year prior to and after the selection of buds for the grafting process; and extent to which its methods might be or might not be more scientific was dependent upon the nature and extent of the records kept, and the tree observation followed by competitors concerned;

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 products; and of inducing a substantial number of salesmen and agents to deal in said nursery products because of such mistaken belief; whereby trade was diverted unfairly to it from aforesaid competitors who truthfully advertised their products:

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

Before *Mr. John W. Addison* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Jesse D. Kash for the Commission.

Smith, Ristig & Smith, 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

Complaint

36 F. T. C.

Trade Commission, having reason to believe that Greening Nursery 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:

PARAGRAPHS 1. Respondent, Greening Nursery Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and having its office and principal place of business in the city of Monroe, State of Michigan.

PAR. 2. The respondent is now, and has been for more than 1 year last past, engaged in selling and distributing fruit trees and other nursery products. Respondent sells said products to members of the purchasing public situated in various States of the United States and causes said products, when sold by it, to be transported from its aforesaid place of business in the State of Michigan to the purchasers thereof at their respective points of location in various States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains, and at all times herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations, and with partnerships, firms, and individuals selling and distributing fruit trees and other nursery products. Among such competitors in such commerce are many who do not in any manner misrepresent their said products and who do not make any false statements in connection with the sale and distribution of their said products.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its nursery products said respondent has made and makes by means of circulars, pamphlets, folders, and by means of advertisements inserted in newspapers and other publications, all of which are circulated between and among the various States of the United States and in the District of Columbia, many representations concerning the nature and quality of its said nursery products and results that may be expected from the use thereof. Among and typical of such representations made by respondent are the following:

Largest Growers of Trees in the World.
World's Largest Tree Growers.

273

Complaint

World's Leading Company.

Right now I'm writing monthly

Pay checks from

\$110 Spare Time

to

\$882 Full Time

Non-Competitive field all to yourself.

BUD SELECTION, that remarkable, *exclusive Greening feature!*

For 26 years, Greening

* * * * *

have been propagating fruit trees by Bud Selection, *exclusive, amazing, scientific discovery* Unduplicated in the Field.

Bud selection gives fruit trees what blood lines are to livestock "pedigreed" Known Performance characteristics, which *eliminate chance or gamble* for fruit tree buyers.

Only Greening men can sell Bud Selected fruit trees.

We paid Pifer, month after month \$248, \$413, \$445, \$375, \$282, and he's still going strong!

Lorimer earned \$502 one month, then \$882—yes almost one thousand dollars in a month.

Amazing new nursery development.

Greening famous super-selected Fruit Trees, propagated by our *exclusive* Bud-Selection method.

My offer is different than any nursery company's offer which you may have considered before * * * will be associated with the *largest* and *oldest* tree nursery in the world. * * * will have as his line, nursery stock of a *decidedly different* character.

Weekly earnings up to \$75.

Greening producers average from \$25 to \$75 a week in Commissions the year 'round.

PAR. 5. Through the use of the statements and representations hereinafore set out and others similar thereto not herein set out, all of which purport to be descriptive of the nature and quality of respondent's products and the effectiveness of its products, as above described, respondent has represented directly and by implication, among other things that respondent is the largest grower of fruit trees in the world; that it is the world's leading company; that its salesmen earn from \$110 part time to \$882 full time per month; that the sale of its products is a noncompetitive field which its agents and salesmen will have all to themselves; that bud selection is an exclusive feature of the respondent company only; that respondent has been propagating fruit trees by bud selection exclusively for 26 years and that its bud-selection discovery is unduplicated in the nursery field; that its bud-selection method gives fruit known performance characteristics which eliminate any chance or gambling on the part of fruit-tree growers; that only its salesmen can sell bud-selected fruit trees; that the large

Complaint

36 F. T. C.

incomes received by the salesmen mentioned are examples and truly indicative of the salary its salesmen would ordinarily make; that its products are an amazing new development; that its fruit trees are superselected; that the Greening Nursery is the oldest in the world; that its line of nursery stock is of a decidedly different character from others; that its salesmen average \$25 to \$75 a week as commissions the year around.

PAR. 6. The aforesaid representations made by the respondent in the manner above described are grossly exaggerated, false, misleading, and untrue. In truth and in fact the respondent is not the largest grower of fruit trees in the world; respondent is not the world's leading company; respondent's salesmen do not earn from \$110 part time to \$882 full time per month; the sale of respondent's products is not a field which offers no competition and which its salesmen have all to themselves; and bud selection is not a remarkable exclusive feature of the Greening Nursery Co. alone. Respondent's bud selection is not an amazing, scientific discovery which is not duplicated in the nursery field, nor are there known performance characteristics which eliminate any chance or gambling on the part of fruit-tree growers; Greening salesmen are not the only salesmen who can sell bud-selected fruit trees. The large incomes allegedly received by the Greening salesmen are not truly indicative of the earnings a salesman would make under usual and ordinary circumstances. Respondent's products are not an amazing new nursery development, nor are its fruit trees superselected or propagated by an exclusive bud selection method. Respondent's nursery is not the oldest or largest nursery in the world, neither is its line of nursery stock of a decidedly different character from that of other nurseries. Respondent's salesmen do not average from \$25 to \$75 in commissions a week the year around.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to said products has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that respondent's said products possess the properties claimed and represented and will accomplish the results indicated, and that agents selling its nursery stock will earn the sums indicated, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise their products and the earnings of their agents. In consequence thereof,

injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 23, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Greening Nursery Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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 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, Greening Nursery Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan and has its office and principal place of business in the city of Monroe, State of Michigan.

PAR. 2. The respondent is now, and for several years last past has been, engaged in selling and distributing fruit trees and other nursery products. Respondent sells said products to members of the purchasing public situated in various States of the United States, and causes said products, when sold by it, to be transported from its

aforesaid place of business in the State of Michigan 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 products in commerce among and between the various States of the United States.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing fruit trees and other nursery products.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its nursery products and for the purpose of inducing salesmen and agents to sell said nursery products to the purchasing public, the respondent has made false, deceptive and misleading statements, and representations concerning its said nursery products by means of circulars and pamphlets and by means of advertisements inserted in newspapers and other publications, all of which are circulated between and among the various States of the United States. Among and typical of such representations made by the respondent are the following:

Bud Selection, that remarkable, exclusive Greening feature!

For 26 years, Greening * * * have been propagating fruit trees by bud selection, exclusive, amazing, scientific discovery unduplicated in the field.

Only Greening men can sell Bud Selected fruit trees.

Non-competitive field all to yourself.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not set out herein, respondent has represented directly and by implication that the respondent is the only nursery which uses the bud-selection method of grafting in the propagation of fruit trees and that fruit trees propagated by the bud-selection method of grafting can only be procured from the respondent and its salesmen.

PAR. 6. The aforesaid representations made by the respondent in the manner above described are grossly exaggerated, false, and misleading. Bud selection is not an exclusive feature of the respondent company only, and the sale of trees propagated by the bud-selection method of grafting is not limited to respondent or its salesmen, but, instead, trees propagated by the bud-selection method of grafting are sold by many of respondent's competitors.

The selection of buds from trees of known character or type and grafting them onto seedlings in the variety propagation of citrus and deciduous fruit trees has been known and practiced from earliest times, and literature as far back as the sixteenth century describes

the process of budding and grafting just exactly as nurseries in the United States are doing today. In the ordinary propagation of fruit trees it has long been known that when they are grown from seeds they do not come true to name. Seedlings are different from the plant from which they are taken in many respects, and in order to get them to come true to name, a bud is taken from a tree which it is desired to propagate. This bud so selected is grafted onto the seedling by inserting it under the bark of the seedling, where it grows fast when properly inserted. When it starts to grow, the part of the stalk above the grafted bud is cut away, and the above-ground part of the tree is grown from the cutting or bud. The tree so grown from such grafted bud will have the characteristics of the tree or limb from which such bud is taken. The characteristics having been thus established in the grafted tree, the tree is either sold or itself used for bud wood in grafting other seedlings.

One of the sources of variety in fruit trees which has been long recognized is the existence of the mutation or sport, which is a limb on a tree that bears fruit that is different in some respects from the fruit on the rest of the tree. The buds from such a limb can be grafted to a seedling in the manner above described, and the tree so grafted will bear fruit having the characteristics of the mutation or sport limb.

The methods of bud grafting hereinabove described are followed by practically all commercial nurserymen, including the respondent. The mechanics of the actual selection of vegetative buds for grafting may vary with the ideas of the individual doing the selecting. Some may go to an orchard and find an exceptionally productive tree that is bearing very fine fruit of the variety desired and select or obtain their foundation buds from that particular tree. Others may select the buds from a particular limb of a tree that is producing exceptionally large or exceptionally highly colored or attractive fruits. The methods followed by the respondent in its bud selection vary from the above only in that records are kept of selected trees or limbs and they are observed from year to year prior to and after the buds are selected for the grafting process. While the method of bud selection followed by the respondent may be more scientific than the method which may be employed by some of its competitors, bud selection is not exclusive with the respondent but, instead, is practiced in some form or other by practically all nurserymen. The extent to which respondent's methods of tree propagation may or may not be more scientific than those of competitors is dependent upon the nature and extent of the records kept, and the tree observation followed by such competitors.

Order

36 F. T. C.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the exclusive nature of its bud-selecting process has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of prospective purchasers, salesmen, and agents into the erroneous and mistaken belief that such statements and representations are true and causes a substantial portion of the purchasing public to purchase, and a substantial number of salesmen and agents to deal in, respondent's nursery products because of such erroneous and mistaken belief. As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 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, Greening Nursery 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, and distribution of fruit trees and other nursery 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 the respondent is the only nursery which uses the bud-selection method of grafting in the propagation of fruit trees.
2. Representing directly or by implication that fruit trees propagated by the bud-selection method of grafting can only be procured from the respondent or its salesmen.

273

Order

3. Representing either directly or by implication that the bud-selection method of grafting is an exclusive feature of respondent's nursery stock.

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

36 F. T. C.

IN THE MATTER OF
**JACOB MOSS, DOING BUSINESS AS LONDON 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 4126. Complaint, May 6, 1940—Decision, Mar. 10, 1943

Where an individual, engaged in the manufacture of cigarettes, tobacco, and other smoking supplies, and in the interstate sale and distribution thereof to wholesalers, jobbers, and retailers—

Represented that his business was a British concern or connected therewith, that his cigarettes were manufactured in England or from English tobacco, and that he was the holder of a royal warrant authorizing him to display the British royal coat of arms on his products, through use of word "London" in his trade name, and in designation of his "London Special Cigarettes," followed by simulation of the British royal coat of arms including British motto "Dieu et mon droit" on cigarette containers, and on counter advertising cards and circulars, and by variously displaying said brand and trade names on containers along with statement featuring "English Style Cigarettes" on the inside thereof;

The facts being that none of his merchandise was imported from foreign countries; the cigarettes in question were made by him in the United States from American tobacco plus a negligible amount of Turkish; and the other representations above set forth were false;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his business status and origin of said products, and thereby cause its purchase thereof:

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

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

Mr. DeWitt T. Puckett for the Commission.

COMPLAINT

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

282

Complaint

PARAGRAPH 1. The respondent, Jacob Moss, is an individual, trading as London Tobacco Co. His place of business is at 132 Hanover Street, Boston, Mass. He is now and has been for more than 2 years last past engaged in manufacturing cigarettes, which he sells to wholesalers, jobbers, and retailers, throughout the United States and in the District of Columbia.

When orders are received for respondent's cigarettes, he causes them to be shipped from his aforesaid place of business in Boston, Mass., to the purchasers thereof located in States of the United States other than the State of Massachusetts, and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in cigarettes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, respondent uses, and at all times herein mentioned has used, the aforesaid trade name "London Tobacco Company" in connection with the sale of cigarettes under the brand name "London Special Cigarettes." A crest, simulating the British royal coat of arms, is also used by respondent to identify said brand of cigarettes. Respondent advertises said cigarettes by means of the radio, circulars, pamphlets, and in various other ways.

PAR. 3. Respondent packs and sells his "London Special Cigarettes" in cardboard boxes. On the top of each box appears the following:

LONDON

SPECIAL

(Crest, simulating the British Royal Coat of Arms)

CIGARETTES

London Tobacco Company

The following statement appears inside the box:

LONDON

Special

ENGLISH STYLE CIGARETTES ARE BLENDED FROM THE HIGHEST GRADES OF NATURAL AROMATIC TOBACCOS—NO CHEMICAL OR ARTIFICIAL FLAVORING

LONDON TOBACCO CO.

Circulars used by respondent to advertise the aforesaid cigarettes feature a pictorial representation, which simulates the British royal coat of arms, and carry the following price representations:

Formerly	-----	25¢ pkg.
Reduced to	-----	15¢ pkg.

Complaint

36 F. T. C.

Said circulars also bear the statements "London Special Cigarettes" and "English Style Cigarettes * * *."

PAR. 4. Through the use of the word "London" as part of his trade name, and the word "English" in his advertising matter, and the statements and depictions hereinabove set out and referred to, and others similar thereto, but not set out herein, the respondent has represented, and now represents, that his is an English concern; that the cigarettes sold under the brand name "London Special Cigarettes" are manufactured or blended in England, or of British tobacco; that he is a royal warrant holder and entitled to use the British royal coat of arms in advertising his products; and that his said cigarettes have recently been reduced in price from 25 cents a package to 15 cents a package.

PAR. 5. The representations set out and referred to herein are untrue and misleading. In truth and in fact, the London Tobacco Co. is not a British concern, and respondent's said cigarettes are not manufactured or blended in England, or of British tobaccos, but are manufactured in the United States of America, of American and other tobaccos. Respondent is not a royal warrant holder, and is not entitled to use the British royal coat of arms in advertising his products. Respondent's cigarettes have not recently been reduced from 25 cents a package to 15 cents a package.

PAR. 6. There is a preference on the part of a portion of the purchasing public for merchandise manufactured in foreign countries. This is particularly true with respect to merchandise which bears the British royal coat of arms, the use of which is well known to many members of the purchasing public to mean that the manufacturer thereof holds a warrant, entitling him to display the said arms, and that the possession of such a warrant indicates that the holder has enjoyed the patronage of the British royal family or a member thereof.

PAR. 7. The representations set out and referred to in paragraph 3 hereof, used by respondent in the manner aforesaid, have the capacity and tendency to and have deceived and misled a substantial part of the purchasing public into the erroneous belief that said representations are true, and have caused and now cause a substantial portion of the purchasing public to purchase substantial quantities of respondent's cigarettes because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Jacob Moss, an individual, trading as London Tobacco 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, 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 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, find that this proceeding is in the interest 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 Moss, is an individual, who for a number of years immediately preceding May 28, 1940, traded as London Tobacco Co., with his place of business located at 132 Hanover Street, Boston, Mass. Respondent was engaged in the manufacture of cigarettes, tobacco, and other smoking supplies, and in the sale and distribution of such merchandise to wholesalers, jobbers, and retailers for resale to the purchasing public.

PAR. 2. In the course and conduct of his business respondent caused his merchandise, when sold, to be transported from his place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States. Respondent maintained a course of trade in his merchandise in commerce among and between the various States of the United States.

PAR. 3. Among the various brands of cigarettes manufactured and sold by respondent was a brand designated by him as "London Special Cigarettes." These cigarettes were packed and sold by respondent in cardboard boxes, each box containing 20 cigarettes. On the top of each box appeared the following:

Findings

38 F. T. C.

LONDON

SPECIAL

(Pictorial representation simulating the British Royal Coat of Arms, including the inscription "Dieu et mon droit," which is the motto of Great Britain)

CIGARETTES

London Tobacco Co.

The words "London Special" also appeared on the side of the box. The following statement appeared inside the box:

LONDON

SPECIAL

ENGLISH STYLE CIGARETTES ARE BLENDED FROM THE HIGHEST GRADES OF NATURAL AROMATIC TOBACCOS—NO CHEMICAL OR ARTIFICIAL FLAVORING

LONDON TOBACCO CO.

Counter advertising cards and circulars supplied by respondent for use by retail dealers in displaying his cigarettes also featured the name "London Special," together with the pictorial representation simulating the British Royal Coat of Arms.

PAR. 4. Through the use of the word "London" as a part of his trade name and to designate and describe his cigarettes, and through the use of the pictorial representation simulating the British royal coat of arms, respondent represented that his business was a British concern or was connected with a British concern, that his cigarettes were manufactured in England or were manufactured from British tobacco, and that he was the holder of a royal warrant authorizing him to display the British royal coat of arms on his products.

PAR. 5. The Commission finds from the evidence that these representations were false and misleading. Respondent's business was not a British concern, nor had it any connection or affiliation with any British concern. The cigarettes so advertised and sold by respondent were not manufactured in England, nor did they contain any British tobacco. They were manufactured by respondent in the United States from American tobacco plus a negligible amount of Turkish tobacco obtained by respondent in the United States. All of the other products sold by respondent were likewise of domestic rather than foreign origin. Respondent was not the holder of a royal warrant and was not authorized to display the British royal coat of arms on his products.

There is a preference on the part of a substantial portion of the purchasing public for merchandise imported from foreign countries, this being particularly true as to cigarettes, tobacco, and other smoking supplies imported from England.

PAR. 6. The Commission finds further that the use by respondent of the false and misleading representations herein set forth, including the use of the word "London" in his trade name, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's business status and with respect to the origin of respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief engendered by such representations.

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 trial examiners of the Commission theretofore duly designed 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 Moss, individually, and trading, as London Tobacco Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's cigarettes, tobacco, and other smoking supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "London," or any other word or words indicative of England, as a part of respondent's trade name; or otherwise representing, directly or by implication, that respondent's business is a British concern or that it has any connection with any British concern.
2. Using the word "London," or any other word or words indicative of England, to designate or describe any product which is not

Order

36 F. T. C.

manufactured in England or manufactured from materials imported from England.

3. Representing, directly or by implication, that any domestic product is imported from England or any other foreign country.

4. Using on respondent's products or in respondent's advertising any pictorial representation of the British royal coat of arms or any simulation thereof; or otherwise representing, directly or by implication, the respondent is the holder of a royal warrant authorizing him to display the British royal coat of arms on his products or in his advertising.

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
PARFUM L'ORLE, INC.

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

Docket 4511. Complaint, May 29, 1941—Decision, Mar. 11, 1943

Where a corporation, engaged in interstate sale and distribution of perfumes and related products—

- (a) Represented, through use of its corporate and trade name "Parfum L'Orle, Inc.," which it featured about its place of business, on its stationery, business and display cards, and other matter, and in conjunction with French brand names of its products in advertisements in newspapers and on labels attached thereto and on containers thereof, including designation "Parfum Lodorante" to designate its products as a whole, that it was a French company and that its perfume was made entirely in France;
- (b) Represented, through inclusion of words "London" and "Paris" in some of its advertisements along with its said corporate name, and on its labels and packages, that it maintained offices and business houses in London, England, and Paris, France; and
- (c) Represented, through use of certain typically French names, including "Princess De Cone," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," and "Madame De Pompadour," as brand names for its products, and use of terms "Parfum L'Odorante" and "L'Orle Odeurs," together with such depictions in advertisements and on labels and containers as women gathering flowers in a large field, together with the words "Sunny France's flowers form the rare essences from which L'Orle's exquisite fragrances are produced," that products in question were made in France and imported into the United States;

When in fact it was not a French company but a New York State corporation; it never maintained any office or place of business in either foreign city; and while for a time it had an arrangement with an English concern which actively distributed and advertised its products both in England and France, said arrangement was not in existence during the period herein involved; it never had a manufacturing establishment in Paris but its products were made in the United States from perfume essences and oils imported from France and combined in this country with domestic ingredients;

- (d) Adopted and made use of a merchandising plan under which it furnished its dealer-customers with so-called reorder blanks on one side of which it set forth its said products by their French trade names and in another column trade names of certain nationally advertised, well-known competitive perfumes; instructed its representatives to create the impression with dealers and the public generally, of a marked similarity between its own and the other respective products; suggested in "cut-off" advertisements "Send us the name of your favorite type fragrance"; and filled orders thus received, listing brands of perfumes of other manufacturers with its own products corresponding to the brand name of the competitive products listed as aforesaid; with tendency to imply that its products were identical with competitive named perfumes;

Complaint

36 F. T. C.

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to products in question, thereby inducing its purchase thereof; and with effect of placing in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby they might mislead and deceive members of said public:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. S. F. Rose for the Commission.

Mr. David J. Moscovitz, 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 Parfum L'Orle, 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, Parfum L'Orle, 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 6 East Thirty-ninth Street in the city of New York, State of New York. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of perfumes and related products.

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

PAR. 3. In the course and conduct of its aforesaid business, the respondent adopted as and for its corporate or trade name the French words "Parfum L'Orle, Inc.," under which to carry on its business, which said name respondent at all times mentioned herein has used continuously, and now uses, in advertising, soliciting the sale of, and selling its products as described herein. Respondent has also referred to and designated, and now refers to and designates, its prod-

289

Complaint

ucts as a whole by the French word "Parfum L'Odorante" and "L'Orle Odeurs," and has adopted and used, and now uses, as and for the trade names of particular brands of its said products certain typically French names, including among others the words "Princess De Conde," "Madam D'Epinay," "Madame De Maintenon," "Duchess De Chateauroux," "Comtesse De Toulouse," and "Madame Du Deffond."

Respondent has caused, and now causes, said corporate or trade name, "Parfum L'Orle, Inc.," to be prominently and conspicuously displayed in and about its place of business and to appear on its stationery, business cards, display cards, and other written and printed matter, which respondent has distributed, and now distributes, among its customers and prospective customers; and has caused, and now causes, said corporate or trade name "Parfum L'Orle, Inc.," alone or in conjunction with said designations "Parfum L'Odorante" and "L'Orle Odeurs" and the aforesaid French names of its particular brands of products, or some one or more of them, to appear in advertisements in various newspapers and other periodicals having a wide distribution throughout the United States, on newspaper mats and other advertising material furnished dealers purchasing respondent's products, and on the label attached to the bottles and packages in which respondent's said products are bottled, packaged, and sold. In addition to said corporate or trade name and said designations of its products, the respondent has often included in said advertisements the words "London" and "Paris." In some instances, the advertisements have also featured picturizations of women gathering flowers in a large field under which appeared the words "Sunny France's Flowers form the rare essences from which L'Orle's exquisite fragrances are produced." Nothing appears in any of respondent's advertising or on any of its labels to indicate or suggest that its products are of domestic manufacture.

PAR. 4. Through the use of the aforesaid acts and practices, including the use of said corporate or trade name, "Parfum L'Orle, Inc.," and the designations of its products as herein described, the respondent has represented, and still represents, directly or by inference, that it is a French company; that it has offices and business connections in London, England, and Paris, France; and that its products have been and are manufactured or compounded in France and thereafter imported into the United States.

PAR. 5. The foregoing representations are confusing, false, and misleading. In truth and in fact, the respondent is not a French company. Respondent has not had, and does not now have, an office

Complaint

86 F. T. C.

or business connection in either London, England or Paris, France. Respondent's said products have not been, and are not now, manufactured or compounded in France and thereafter imported into the United States, but, on the contrary, have been, and are now, manufactured or compounded in the United States, and are domestic and not imported products.

PAR. 6. There is, and for many years has been, a preference on the part of a substantial portion of the purchasing public for perfumes and related products manufactured or compounded in France and imported into the United States, such preference being due in part to a belief on the part of this portion of the public that such perfumes and related products are superior in quality to and possess other advantages over perfumes and related products manufactured or compounded in the United States.

PAR. 7. In the course and conduct of its aforesaid business, the respondent, in order to promote the sale of its products, has also adopted and used a further plan or scheme to mislead and deceive the purchasing public with regard to respondent's said products. In carrying into effect said plan or scheme, the respondent has furnished and caused to be furnished to its dealer customers so-called "reorder blanks," and other printed matter on each of which appears on the left-hand side a printed list of the French names of respondent's products, together with a number for each product, and paralleling which list in another column the respondent has written, or caused to be written, with pen and ink or lead pencil the trade names of certain well-known perfumes manufactured, sold, and distributed by individuals, firms, and corporations other than respondent. As an illustration, a partial list of said names so prepared and distributed is as follows:

Princess De Conde	Shalimar
Madam D'Epinay	L'Heure Bleu (Blue Hour)
Madame Adelaide	Zaza
Madame De Maintenon	Chanel 5
Madame De Pompadour	Femme De Paris

Said trade names listed in the right-hand column, and all others similarly listed or caused to be listed by respondent as alleged herein, are owned by and are the names of products of manufacturers or distributors of perfumes other than respondent. Said products have been nationally advertised by their respective owners over long periods of time, and are well and favorably known by a substantial portion of the purchasing public as perfumes of quality and as possessing other desirable characteristics.

As a further part of said plan or scheme, and in promotion thereof, the respondent has instructed its salesmen and other representatives to create an impression in the minds of dealers and the public generally that there is a marked similarity in odor between respondent's said products and the products of the other manufacturers and distributors as shown on said lists; has outlined in detail to its said salesmen and other representatives, and has caused them in soliciting the sale of and selling respondent's products to employ a method whereby the dealers and salespeople handling said products may be, and are, informed of a definite manner in which respondent's products may be sold as, for and instead of the listed products of other manufacturers and distributors of perfumes; and has received and filled orders through the mails, and otherwise, with its own products as and for various brands of perfumes ordered from respondent by the trade names of other manufacturers and distributors included on the lists prepared and distributed as herein set forth.

PAR. 8. The use by the respondent of the aforesaid acts and practices has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and has the tendency and capacity to, and does, induce such portion of the public to purchase substantial quantities of respondent's products as a result of such erroneous and mistaken belief.

PAR. 9. Through and by the means herein set forth, the respondent has also placed directly in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers have been, and are, enabled to mislead and deceive members of the purchasing public.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 29th day of May 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Parfum L'Orle, Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 28, 1941, the respondent filed its answer in this proceeding. Thereafter, on January 25, 1943, in the course of a hearing scheduled for the purpose of receiving testimony

Findings

36 F. T. C.

in support of the charges stated in the complaint, a stipulation by and between counsel for the Commission and counsel for the respondent was read into the record. By the terms of this stipulation it was agreed that the statement of facts read into the record may be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission, without intervening procedure, may proceed upon said statement of facts, including inferences which it may draw from such stipulated facts, to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent expressly waived the filing of a trial examiner's report upon the evidence.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Parfum L'Orle, 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 6 East Thirty-ninth Street in the city of New York, State of New York. The respondent is now, and for more than 6 years last past has been, engaged in the sale and distribution of perfumes and related products.

PAR. 2. Respondent causes its said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in 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 perfumes and related products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent adopted as and for its corporate or trade name the words "Parfum L'Orle, Inc.," under which to carry on its business, which said name respondent at all times mentioned herein has used continuously, and now uses, in advertising, soliciting the sale of, and selling its products as described herein. The respondent has in the

past also referred to and designated its products as a whole by the words "Parfum L'Odorante" and "L'Orle Odeurs." The respondent has abandoned the use of the term "L'Orle Odeurs" and has changed the phrase "Parfum L'Odorante" to "Parfum Lodorante." Respondent used, as trade names for particular brands of its products, certain typically French names, including among others the words "Princess De Conde," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," and "Madame De Pompadour," but, prior to the issuance of the complaint herein, discontinued such use.

Respondent has caused, and now causes, said corporate or trade name, "Parfum L'Orle, Inc.," to be prominently and conspicuously displayed in and about its place of business and to appear on its stationery, business cards, display cards, and other written and printed matter, which respondent has distributed. Prior to, but not since, the issuance of the complaint herein, respondent also caused its corporate name, "Parfum L'Orle, Inc.," to appear in conjunction with the aforesaid French names of its particular brands of products in advertisements in various newspapers and other periodicals having a wide distribution throughout the United States; likewise, at that time, respondent also furnished newspaper mats and other advertising material containing the same corporate name and brand names above referred to, to dealers purchasing the respondent's products for resale. Prior to, but not since, the issuance of the complaint herein, respondent's corporate name, "Parfum L'Orle, Inc.," and the terms "Parfum L'Odorante" and "L'Orle Odeurs," and also the French names of its particular brands of products appeared on the labels attached to the individual bottles and packages in which respondent's products were bottled, packaged, and sold. Since the issuance of the complaint herein, respondent has used its corporate name, "Parfum L'Orle, Inc.," and the general designation "Parfum Lodorante" in conjunction with typically American names for its various types and brands of products. Prior to, but not since, the issuance of the complaint herein, in addition to the use of respondent's corporate name and the use of the various French terms to designate its product in the manner hereinabove described, the respondent had also included in some of its advertisements the words "London" and "Paris"; and, in some instances, the advertisements had also featured picturizations of women gathering flowers in a large field, under which picturization appeared the words, "Sunny France's flowers form the rare essences from which L'Orle's exquisite fragrances are produced." Prior to the date of this stipulation, neither the advertisements of respondent's products nor the labels or packages contained any statement to the effect that the products

Findings

36 F. T. C.

offered for sale by the respondent were actually compounded in the United States.

PAR. 4. The use of the corporate name, "Parfum L'Orle, Inc," and the use of the designation "Parfum Lodorante," when not accompanied by a conspicuous statement that the products offered for sale under the respondent's corporate name and under the designation above set forth were actually compounded or made in the United States, constituted a representation that the respondent corporation is a French company and the perfume is one entirely made in France. The appearance of the words "London" and "Paris" on respondent's labels, packages, and in its advertisements constituted a representation that respondent maintained offices and business houses in London, England, and Paris, France. The respondent's use of certain typically French names, including among others the words "Princess De Conde," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," and "Madame De Pompadour" as trade names for particular brands of its said products and the use of the terms "Parfum L'Odorante" and "L'Orle Odeurs," constituted a representation that such products were made or compounded in France and thereafter imported into the United States.

PAR. 5. The respondent corporation is not a French company. It is a domestic corporation, incorporated under and by virtue of the laws of the State of New York. It does not now maintain any office or place of business either in Paris, France, or in London, England. Respondent corporation has never maintained, under its own name, any place of business in either London, England, or Paris, France, but it did at one time have an exclusive distributorship contract with an English corporation known as "A. & V. Limited," which actively distributed, advertised and sold respondent's products both in England and France. This distributorship arrangement, however, was not in existence during all of the time during which respondent's advertising literature, labels and packages contained the words "London" and "Paris." The respondent corporation has never maintained a manufacturing establishment in Paris, France. Respondent's products have not been and are not now manufactured or compounded in France and thereafter imported into the United States. Respondent's products are made or compounded in the United States, and, in the past and up to the present time, have been and are made from perfume essences and essential oils which were imported from France and which are combined in this country with the domestic ingredients necessary to complete the compounding of the finished product.

PAR. 6. There is, and for many years has been, a preference on the part of a substantial portion of the purchasing public for perfumes

and related products manufactured or compounded in France and imported into the United States, such preference being due in part to a belief on the part of this portion of the public that such perfumes and related products are superior in quality to and possess other advantages over perfumes and related products manufactured or compounded in the United States.

PAR. 7. At one time, in the course and conduct of its aforesaid business, prior to the issuance of the complaint herein, the respondent, in order to promote the sale of its deodorizing perfume products, adopted and used a plan to merchandise such products which is hereinafter described. In carrying into effect this plan, the respondent furnished and caused to be furnished to its dealer customers so-called "reorder blanks," and other printed matter, on each of which appeared on the left-hand side a printed list of the French trade names of respondent's products, together with a number for each product, and paralleling which list, in another column, the respondent had written, or caused to be written, the trade names of certain well-known perfumes manufactured, sold, and distributed by individuals, firms, and corporations other than respondent, with which perfumes respondent's deodorizing perfumes were considered by respondent to harmonize. As an illustration, a partial list of said names so prepared and distributed is as follows:

Princess De Conde	Shalimar
Madam D'Epinay	L'Heure Bleu (Blue Hour)
Madame Adelaide	ZaZa
Madam De Maintenon	Chanel 5
Madame De Pompadour	Femme De Paris

Said trade names listed in the right-hand column, and all others similarly listed or caused to be listed by respondent, are owned by and are the names of products of manufacturers or distributors of perfumes other than respondent. Said products have been nationally advertised by their respective owners over long periods of time, and are well and favorably known by a substantial portion of the purchasing public as perfumes of quality and as possessing other desirable characteristics.

As a further part of said plan or scheme and in promotion thereof, the respondent instructed its salesmen and other representatives to create an impression in the minds of dealers and the public generally that there is a marked similarity in odor and a harmonization between respondent's said deodorizing perfume products and the products of the other manufacturers and distributors as shown in said lists. Respondent in some "cut-off" advertisements of its products under

this plan suggested to the public, "Send us the name of your favorite type fragrance," and received orders through the mails and otherwise, listing brands of perfumes by the trade names of other manufacturers and distributors included on the right-hand side of the list prepared and distributed by the respondent, as herein set forth, and respondent filled such orders with those of its deodorizing perfume products appearing on the left-hand side of the list in the position corresponding to the brand name of the product listed. The plan described in paragraph 7 hereof was discontinued by respondent prior to the issuance of the complaint herein.

PAR. 8. The use by the respondent of the aforesaid acts and practices has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and has the tendency and capacity to induce such portion of the public to purchase substantial quantities of respondent's products as a result of such erroneous and mistaken belief.

PAR. 9. Through and by the means herein set forth, the respondent has also placed directly in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers have been enabled to mislead and deceive members of the purchasing public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts read into the record at a hearing held in New York, N. Y., on January 25, 1943, 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Parfum L'Orle, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the

offering for sale, sale, and distribution of respondent's perfumes and perfume products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the terms "Paris," "Paris, France," "London," or "London, England," or in any other manner, that respondent maintains branches or business establishments in those cities, unless and until respondent does in fact actually maintain such branches; or otherwise representing that respondent maintains branches in any city in which it does not maintain an actual bona fide branch.

2. Representing, through the use of the terms "Parfum L'Odorante," "L'Orle Odeurs," "Princess De Conde," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," "Madame De Pompadour," or any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any other manner, that perfumes which are made or compounded in the United States are made or compounded in France or in any other foreign country: *Provided, however,* That the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States.

3. Using respondent's corporate name "Parfum L'Orle, Inc.," or the brand name "Parfum Lodorante," to describe or refer to its products, without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

4. Using or furnishing to others for their use, printed or other advertising matter which contains the name of any of the well-known perfumes of respondent's competitors in connection with the listing or other offering of its own products, so as to import or imply, or the effect of which tends or may tend to convey the implication, that the products of respondent are identical with or are the same as the named perfumes of such competitors.

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

F. A. STUART COMPANY, AND BENSON & DALL, INC.

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

Docket 4753. Complaint, Apr. 24, 1942—Decision, Mar. 11, 1943

Where a corporation, engaged in interstate sale and distribution of "Stuart's Laxative Compound Tablets," and an advertising agency, aiding in the preparation of its advertising material; by means of advertisements in newspapers and magazines, circulars, and other advertising literature—

- (a) Represented that product in question was entirely safe and harmless and might be used without danger of ill effects, through such statements as "Try Stuart's Laxative Compound * * * for its safe * * * results," and "No bad after-effects";

When in fact it was neither safe nor harmless in that it contained phenolphthalein in quantities sufficient to cause, in some instances, injury to health if used under prescribed or usual conditions; and

- (b) Failed to reveal facts material with respect to consequences which might result from use thereof under such conditions, in that said laxative was potentially dangerous when taken by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that use of said preparation was entirely safe and harmless, thereby inducing its purchase thereof:

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Alfred P. Stuart, of Marshall, Mich., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that F. A. Stuart Co., a corporation, and Benson & Dall, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, F. A. Stuart Co., is a corporation, existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 117 South Jefferson Street, Marshall, Mich.

PAR. 2. This respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated "Stuart's Laxative Compound Tablets."

In the course and conduct of its business, respondent, F. A. Stuart Co., causes said medicinal preparation, when sold, to be transported from its 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 herein mentioned has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Benson & Dall, Inc., is a corporation, existing under the laws of the State of Illinois, with its principal office and place of business located at 327 South La Salle Street, Chicago, Ill. This respondent is an advertising agency and as such is engaged in formulating, editing, selling, and disseminating advertising matter. This respondent is the advertising representative of the respondent, F. A. Stuart Co., a corporation and, as such, prepares and aids in the preparation of advertising material used by the respondent, F. A. Stuart Co., a corporation, and disseminates and aids in the dissemination of such advertising material, including the advertising matter hereinafter set forth, in connection with the sale and distribution of the medicinal preparation hereinabove designated.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the medicinal preparation sold and distributed by respondent, F. A. Stuart Company, a corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal 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 said products by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by ad-

Complaint

36 F. T. C.

vertisements in newspapers, magazines, and by circulars and other advertising literature, are the following:

Try Stuart's Laxative Compound * * * for its safe * * * results.
No bad after-effects.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, respondents represent that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 7. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, said preparation is not safe or harmless, as it contains the drug phenolphthalein in a quantity sufficient to cause, in some instances, injury to health if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

PAR. 8. The 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis. In some instances, its use may cause a skin rash, and such use should be discontinued when a rash occurs. The frequent or continued use of said preparation may result in dependence on laxatives.

PAR. 9. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that the use of the preparation designated "Stuart's Laxative Compound Tablets" is entirely safe and harmless, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said medicinal preparation.

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 April 24, 1942, issued and on April 27, 1942, served its complaint in this proceeding upon the respondents, F. A. Stuart Co., a corporation, and Benson & Dall, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance and service of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F. A. Stuart Co., is a corporation, existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 117 South Jefferson Street, Marshall, Mich.

PAR. 2. This respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated "Stuart's Laxative Compound Tablets."

In the course and conduct of its business, respondent, F. A. Stuart Co., causes said medicinal preparation, when sold, to be transported from its 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 herein mentioned has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Benson & Dall, Inc., is a corporation, existing under the laws of the State of Illinois with its principal office and place of business located at 327 South La Salle Street, Chicago, Ill. This respondent is an advertising agency and as such is engaged in formulating, editing, selling, and disseminating advertising matter.

Findings

36 F. T. C.

This respondent is the advertising representative of the respondent, F. A. Stuart Co., a corporation, and as such prepares and aids in the preparation of advertising material used by the respondent, F. A. Stuart Co., a corporation, and disseminates and aids in the dissemination of such advertising material, including the advertising matter hereinafter set forth, in connection with the sale and distribution of the medicinal preparation hereinabove designated.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the medicinal preparation sold and distributed by respondent, F. A. Stuart Co., a corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal 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 said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by advertisements in newspapers, magazines, and by circulars and other advertising literature, are the following:

Try Stuart's Laxative Compound * * * for its safe * * * results.
No bad after-effects.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, respondents represent that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 7. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, said preparation is not safe or harmless, as it contains the drug phenolphthalein in a quantity sufficient to cause, in some instances, injury to health if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

PAR. 8. The advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts

800

Order

material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions are are customary or usual. In truth and in fact, said preparation is a laxative and is potentially dangerous when taken by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis.

PAR. 9. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that the use of the preparation designated "Stuart's Laxative Compound Tablets" is entirely safe and harmless, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said medicinal 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 the answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, F. A. Stuart Co., a corporation, and Benson & Dall, Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of a certain medicinal preparation designated "Stuart's Laxative Compound Tablets," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

Order

36 F. T. C.

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

(a) Represents, directly or by implication, that said preparation is safe or harmless and may be used without danger of ill effects upon the health of the user; or

(b) Fails to reveal that said preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis; *Provided, however,* That such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any representation prohibited in paragraph 1 (a) hereof, or which fails to comply with the affirmative requirements set forth in paragraph 1 (b) hereof.

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

Syllabus

IN THE MATTER OF
JOSTEN 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 3611. Complaint, Sept. 28, 1938—Decision, Mar. 13, 1943

Where a corporation, engaged in the manufacture of school class rings and similar jewelry, and in competitive interstate sale and distribution thereof, by means of circulars and other printed matter, and salesmen who called upon high-school principals, classes, and committees, and local jewelers—

(a) Represented that it was the world's largest producer of fine class rings, announcements, and awards, and incorrectly portrayed the size of its plant in circulars and photographs through a composite picture upon which a portion of the building appeared twice so as to give the appearance of greater length and width than was actually the fact;

When in fact volume of its business was less than that of certain of its competitors;

(b) Represented its "Dura-Tone" rings as "solid gold" and "10K solid gold," directly and through its salesmen, and in circulars;

When in fact said rings, in addition to 10-carat gold, contained from 25 percent to 35 percent of base metal, which was entirely covered by gold and could not be ascertained by examination; and such contradictory explanatory matter in its circulars as "with duro-gold reinforced center core" and "with duro-metal reinforced center core" did not eliminate the deception, intention of which was evidenced by its instructions to salesmen in its Sales Manual, wherein said base metal, composed entirely of bronze, was falsely described as having a "small fine gold content"; and

(c) Represented its so-called "truss ring" or "truss type ring" or "KT" ring, or "patented 10 K truss constructed ring," in advertising and through salesmen as a 10-carat solid gold ring, and in its sales manual described said "10 KT" ring as a "10 K solid gold ring," and in bulletins to its salesmen stated "Don't Explain KT". In general we don't want you to *explain* KT. Just sell it. Only discuss KT construction when forced to do so. Then take the offensive," and set forth that the "T after K" was "a signal to our factory calling for our finest and most expensive method of fabricating the gold;"

The facts being that while said ring was made of 10-carat gold, it had a hollow head and shoulder, the cavities extending down to about the first third or half of the ring, and bore no stamp or other information to indicate that the product was not in fact solid gold;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and to cause its purchase thereof because of such belief; whereby trade was diverted unfairly to it from competitors who do not misrepresent their merchandise or business:

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

Complaint

36 F. T. C.

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

Mr. John R. Phillips, Jr., and *Mr. Karl E. Steinhauer* for the Commission.

Mr. Samuel Lord, of Owatonna, Minn., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Josten Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at Owatonna, Minn. The respondent, in its own name and under the name and style of "Jostens," is now, and has been for more than 1 year last past, engaged in the manufacture of school class rings and other similar jewelry and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent causes said products, when sold, to be transported from its place of business in Owatonna, Minn., to the purchasers thereof located in the various States of the United States, other than the State of Minnesota, and in the District of Columbia, or causes said products, when sold, to be transported from its place of business in Owatonna, Minn., to local jewelers located in various States of the United States, other than the State of Minnesota, and in the District of Columbia, with whom arrangements have been made by representatives of the respondent for delivery of said articles of merchandise to the respective individual purchasers thereof, the collection of the charges thereon, and the attention to other necessary details in connection therewith.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the sale and distribution of school class rings and other similar jewelry in commerce between and among the various States of the United States and in the District of Columbia. Among said com-

petitors are many who do not in any manner misrepresent the nature and status of their business or the character and quality of the products sold and distributed by them and who do not in any manner make any misrepresentations in connection with the sale and distribution thereof.

PAR. 4. In the course and conduct of its business in said commerce, as aforesaid, the respondent employs salesmen or representatives who call on high-school classes of prospective graduates and exhibit to such classes the types of class rings which respondent sells and distributes. In exhibiting said rings to said classes of prospective purchasers, respondent's said salesmen or representatives are authorized and directed to, and they do, make many false statements and representations to said prospective purchasers concerning the nature and status of the business conducted by the respondent and concerning the character and quality of said class rings and the fineness of the metal from which said rings are made, and respondent advertises said rings through the distribution among prospective purchasers of pamphlet folders, circulars, souvenir blotters, and other printed matter containing many false statements and representations concerning the nature and status of the business conducted by the respondent and concerning the character and quality of said class rings and the fineness of the metal from which said rings are made.

Among the false statements thus made by respondent, are the following:

1. That respondent is the world's largest producer of fine class rings, announcements, and awards.
2. That the rings designated by respondent as "Duratone," which in fact are composed in part of base metal, are solid 10-carat gold.
3. That certain of the rings sold by respondent, which are in fact partly hollow, are solid 10-carat gold.
4. That the rings stamped by respondent as "10-KT" are solid 10-carat gold.

In truth and in fact respondent is not the world's largest producer of fine class rings, announcements, and awards. The rings designated by respondent as "Duratone" are not solid 10-carat gold but are composed in part of base metal. The rings, which are in part hollow, are not solid 10-carat gold. Rings stamped by respondent as "10-KT" are not 10-carat solid gold rings but are in fact rings made in part of metals other than gold.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent in thus designating and describing the class ring and school jewelry referred to, as hereinbefore set forth, have had, and now have, a tendency and capacity to mislead

Findings

36 F. T. C.

and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of this erroneous belief induced by the false, misleading, and deceptive advertisements and representations of respondent, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been unfairly diverted to respondent from competitors who truthfully advertise their respective products. As a result thereof substantial injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of respondent, as hereinabove set out, are to the prejudice of the public and 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 28, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Josten Manufacturing Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before 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, Josten Manufacturing Co., is a corporation, organized, existing, and doing business under, and by virtue of,

the laws of the State of Minnesota, having its principal office and place of business at Owatonna, Minn. The respondent, in its own name and under the name and style of "Josten's," is now, and for several years last past has been, engaged in the manufacture of school class rings and other similar jewelry and in the sale and distribution thereof in commerce between and among the various States of the United States. Respondent causes said products, when sold, to be transported from its place of business in the State of Minnesota 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.

PAR. 2. In the course and conduct of its business, respondent is now, and has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of school class rings and other similar jewelry in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business in connection with the offering for sale and sale of its class rings to high-school classes of prospective graduates, the respondent issues and distributes various advertising material consisting particularly of circulars and other printed matter. In addition thereto, respondent employs salesmen or representatives, who call upon principals of various high schools and upon local jewelers who may be interested in acting as distributing agents for rings purchased by any high-school class. Such salesmen also from time to time appear before high-school classes and the committees appointed for the purpose of arranging for the purchase of class rings. In its various circulars and by and through its salesmen and representatives, the respondent has made false and deceptive representations concerning the nature and status of the business conducted by the respondent and concerning the character, quality, and construction of the class rings sold and distributed by it.

Among and typical of such false and deceptive statements and representations made by the respondent are the following:

1. That the respondent is the world's largest producer of fine class rings, announcements, and awards.

2. That the rings designated by respondent as "Dura-Tone," which in fact are composed in part of base metal, are solid 10-carat gold.

3. That certain of the rings sold by respondent which are in fact partly hollow, are solid 10-carat gold.

PAR. 4. Based upon the testimony of competitors of the respondent and upon the testimony of the respondent, the Commission finds that the respondent is not the world's largest producer of fine class rings,

announcements, and awards, but that, in fact, the volume of respondent's business is less than that of certain of its competitors who are engaged in the sale and distribution of class rings, announcements, and awards. In connection with its representation as to size, the respondent has issued circulars and photographs of its plant at Owatonna, Minn., which incorrectly portrayed the size of respondent's plant. To accomplish this, the respondent caused a composite picture to be made, upon which a portion of the building appears twice, to give the appearance of greater length and width than is actually the fact.

PAR. 5. Respondent's Dura-Tone ring is a ring composed in part of 10-carat gold and in part of base metal. The base-metal content of such rings constitutes from 25 to 35 percent of the metal content. These rings are so constructed that the base metal is entirely covered by gold, and the base-metal content cannot be ascertained by examination of said rings. The respondent and its salesmen, acting under respondent's direction, have designated and described said ring as "solid gold" and "10 K solid gold." Since respondent's Dura-Tone rings are bimetal rings and are not solid-gold rings, the representation that respondent's rings are "solid gold" is false and deceptive and cannot be qualified by such terms as "with duro-gold reinforced center core" and "with duro-metal reinforced center core," but instead, such terms serve only to contradict the representation that respondent's rings are solid gold and do not have the effect of wholly eliminating the deception. The same is true of other descriptive or explanatory matter appearing in smaller type in the text of respondent's circulars. That respondent's intention is to convey to prospective purchasers the impression that said rings are composed either entirely of gold or have a gold content greater than is the fact, is further evidenced by its instructions to salesmen which appear in its Sales Manual, wherein duro-metal is described as having "a small fine gold content" when in fact it is composed entirely of bronze, and also by the use of the term "duro-gold" to describe the base-metal content.

PAR. 6. Another ring sold and distributed by the respondent is the so-called "truss ring" or "truss type ring," which is sometimes designated or described as respondent's "KT" ring. In designating and describing this truss-type ring, the respondent, in its various advertising and through its salesmen and representatives, refers to said ring as "Josten's patented 10 K truss constructed ring" and represents further that said ring is a 10-carat solid-gold ring. In respondent's Sales Manual issued to salesmen, the so-called "10 KT" ring is described as a "10 K solid gold ring." In bulletins published

by respondent for distribution to its salesmen the following are typical remarks and instructions made by respondent to its salesmen:

DON'T EXPLAIN KT

In general, we don't want you to *explain* KT. Just sell it.

Only discuss KT construction when forced to do so. Then take the offensive.

The T which we put after the K is a signal to our factory calling for our finest and most expensive method of fabricating the gold.

What does T after K mean?

It is a signal to our factory to furnish the finest and most expensive construction.

Respondent's KT or truss-type ring is made of 10-carat gold, with no addition of any base metal. This ring has a hollow head and shoulder, the cavities extending down to about the first third or half of the ring. By means of such cavities a saving in the amount of gold is accomplished, and the existence of such cavities in the ring are not discernible to a purchaser or prospective purchaser, nor does respondent place upon said ring any stamp or other information which would apprise such purchaser or prospective purchaser that the ring is not a solid-gold ring. The use of the term "solid-gold" to designate or describe respondent's truss-type ring is false and misleading, since a ring having undisclosed air cavities within its interior is not a solid-gold ring.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and, as a consequence thereof, to cause members of the purchasing public, because of this erroneous belief, to purchase a substantial volume of respondent's products, with the result that trade has been unfairly diverted to the respondent from competitors who are also engaged in the sale and distribution of class rings and other merchandise in commerce among and between the various States of the United States and who do not misrepresent the quality or construction of their merchandise or the size and extent of their business.

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 briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Josten Manufacturing 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, and distribution of class rings and other similar jewelry in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. The use of any statements or representations or 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 or the comparative volume of business transacted by the respondent.

2. Representing, either directly or by implication, that any ring or other article of jewelry composed in part of base metal is solid gold or solid 10-carat gold.

3. Representing, either directly or by implication, that any ring which is in fact partly hollow or has undisclosed cavities within the interior of such ring is a solid gold or solid 10-carat gold ring.

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

CHARLOTTE BRANDENBURG

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4614. Complaint, Oct. 10, 1941—Decision, Mar. 13, 1943*

Where an individual, engaged in interstate sale and distribution of her "Electro Magnetic Nerve Vitalizer" or "Electro Magnetic Vibrator"; by means of advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented that her device utilized electric current and magnetic radiations to feed and revive the entire system, including all nerve centers; would relax and stimulate the nerves and revitalize, invigorate, and reactivate the entire nervous system; supplied an electrically generated, steady heat, which relaxed all congested conditions and relieved pain, soreness, and inflammation; and that use thereof would promote and increase circulation, equalize the distribution of blood, and improve its quality; soothe and regulate the stomach, aid digestion by breaking up nutritive matter, stimulate the flow of digestive juices, improve the assimilation and elimination of food, relieve and correct constipation; and assist nature in rebuilding new cells and tissue, reactivating the glands, and improving internal secretions;
- (b) Represented that her device had curative powers in the treatment of paralysis, arthritis, neuralgia, epilepsy, hysteria, insanity, locomotor ataxia, St. Vitus dance, all forms of rheumatism, sore spots, contracted muscles, insomnia, hardening of the arteries, and prostate gland trouble; and was effective in the treatment of lumbago, catarrh, head colds, influenza, writer's cramp, infantile paralysis, and deterioration of the tissues;
- (c) Represented that use thereof would defer hardening of the arteries, reduce blood pressure, deter apoplexy, aid in restoring normal productive power, assist the bowels and kidneys to function properly, stimulate the action of the liver, permanently relieve all bladder troubles, strengthen and stimulate heart action, and tear down diseased tissues; and
- (d) Represented that it was effective in eliminating the causes of disease, maintaining health in the normal, and restoring it to the sick;

The facts being that the heat produced by said device was not sufficient to have any effect where application might be indicated, its vibratory properties were not sufficient to have any beneficial effect whatsoever, and the mechanical effect from use thereof was so small as to be incalculable and of no value; it had no therapeutic value in the treatment of any disease or condition of the body, or value in eliminating the causes of disease; any beneficial effect that might be obtained from use thereof would be purely psychological; and the various claims and representations made therefor, as above set forth, were false;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said statements were true, thereby inducing its purchase of such device:

Complaint

36 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. Arthur F. Thomas*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

Mr. O. M. Fitzhugh and *Mr. E. B. Simons*, of San Antonio, Tex., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Charlotte Brandenburg, is an individual, with her office and principal place of business located at 804 Maverick Building, San Antonio, Tex. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing a device, designated as an "Electro Magnetic Nerve Vitalizer" or an "Electro Magnetic Vibrator," which device is advertised for use in the treatment of various ailments and conditions of the body.

PAR. 2. In the course and conduct of her aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said product by the United States mail and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product; 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 said product in commerce, as "commerce" is defined by the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

The Therapeutic effect of this instrument is to promote and equalize the circulation, relax and normalize the Nerves, improving assimilation and elimination.

It is a Body Builder, as it helps Nature to rebuild new cells and tissues. It reactivates the glands also working directly upon the internal secretions, stimulates the Liver, enabling the system to become rid of the toxic materials. It's gentle action on the Kidneys causes them to resume their normal action; it will assist the stomach and aid digestion by helping break up the nutritive matter and stimulating the flow of digestive juices. It's direct effect upon the intestines is to relieve and correct the dangerous condition of Constipation.

It gently stimulates the nerves, soothes and regulates the stomach, strengthens the heart and pulse and by equalizing the distribution of the blood (and improving its quality), lends to nature the kind of aid that nature needs to bring recovery.

It's action upon the bladder permanently relieves all troubles from that source. In fact, it's properties transmitted to the human system enables one to resist and ward off a great many diseases, which prey upon the body.

REACTIVATES THE GLANDS

The use of this instrument defers the hardening of the arteries, reduces blood pressure and deters apoplexy. It will then aid in restoring normal productive power. It assists the bowels and kidneys to function properly, relieves stiffness, adjusts and equalizes the blood flow, strengthens and stimulates heart action, tears down the diseased tissues and assists nature in re-building of new tissues, reactivates the glands and makes the whole body alert, elastic and vigorous.

AIDS nature to help overcome FLU and its after effects. For chronic Run-Down Nervous Conditions.

The effect of this instrument upon the Central Nervous System is little short of miraculous. Its gentle Vibrations, together with the Electro Magno Thermo waves makes it a natural curative agent in paralysis, neuralgia, sciatica, epilepsy, hysteria, insanity, locomotor ataxia and St. Vitus dance; for all forms of Rheumatism, contracted muscles, sore spots. In all of these cases the Vitalizer has proved especially efficient.

Marvelous results have been obtained by the use of this instrument in cases of Lumbago, Insomnia, Catarrh, cold in the head, stopped-up nose, Influenza, writers cramp, Infantile Paralysis, deterioration of tissues, etc. When in any way possible for Nature to be helped, one cannot hurt themselves by the use of this instrument.

An Instrument That May Be Used In The Home. Ordinary Electric Current—A Fine, Gentle Vibration Radiating Heat. A Magnetic Zone.

Removes Pain, Soreness and Inflammation For Sore Muscles and Sprains FOR BETTER HEALTH

A SCIENTIFIC INVENTION

Which is More Than a "Vibrator"—It is in Every Way a "Nerve Vitalizer" to be Used in Treating the Human Body—to Organize Its Disorders.

The combined properties of this Instrument will engender increased activity to cell structure alimentary tract, Liver, Kidneys, Circulatory System, Nerve Trunk, and Brain.

If Sick, get Well, If well, Stay Well by using The New Dr. Ch. Bergman's Electro Magnetic Nerve Vitalizer.

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 respondent's device, respondent represents, directly and by implication, that her device, designated as "Electro Magnetic Nerve Vibrator" or "Electro Magnetic Vibrator," has the therapeutic effect of promoting and equalizing the circulation, relaxing and normalizing the nerves, and of improving assimilation and elimination; that it acts as a body builder, helps nature to rebuild new cells and tissues, reactivates the glands, improves internal secretions, stimulates the liver, aids in the elimination of toxic materials, causes the kidneys to resume their normal action, assists the stomach, aids digestion by breaking up the nutritive matter, stimulates the flow of digestive juices, and relieves and corrects the dangerous condition of constipation; that its use stimulates the nerves, soothes and regulates the stomach, strengthens the heart, and lends to nature the kind of aid which nature needs to bring recovery; that its action upon the bladder permanently relieves all trouble from that source and enables one to resist and ward off a great many diseases; that its use defers hardening of the arteries, reduces blood pressure and deters apoplexy; that its use will aid in restoring normal productive power; that its use makes the whole body alert, elastic and vigorous; that the use of said device aids nature in overcoming flu and its after effects, and chronic run-down nervous conditions; that the effect from the use of said device is little short of miraculous; that it is a natural corrective agent for the treatment of paralysis, neuralgia, sciatica, epilepsy, hysteria, insanity, locomotor ataxia, St. Vitus dance, all forms of rheumatism, contracted muscles and sore spots; that its use is an effective treatment for lumbago, insomnia, catarrh, cold in the head, stopped up nose, influenza, writer's cramp, infantile paralysis and deterioration of tissues; that the use of said device removes pain, soreness and inflammation, or sore muscles and sprains; that the use of said device will increase activity of the alimentary canal, liver, kidneys, circulatory system, nerve trunk, and brain; and that its use will maintain health in normal persons and restore health to sick persons.

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 device does not have the therapeutic effect of promoting and equalizing the circulation, relaxing and normalizing the nerves and of improving assimilation and elimination. Said device cannot act as a body builder, nor can it help nature to rebuild new cells and tissues, reactivate the glands, improve internal secretions, stimulate the liver, aid in the elimination of toxic materials, cause the kidneys to resume their normal action, assist the stomach, aid

digestion, stimulate the flow of digestive juices, or relieve and correct constipation. The use of said device cannot stimulate the nerves, soothe and regulate the stomach, strengthen the heart, or supply any material aid to nature in its health restoring process. The action of said device upon the bladder cannot permanently relieve trouble from that source and the use of said device cannot enable one to resist and ward off diseases. The use of said device cannot defer the hardening of the arteries nor can it reduce blood pressure and defer apoplexy. The use of the said device cannot aid in restoring normal productive power. Its use cannot make the whole body alert, elastic and vigorous, nor can it aid nature in overcoming flu and its after effects or chronic run-down nervous conditions. It is not a natural corrective agent for the treatment of neuralgia, sciatica, epilepsy, hysteria, insanity, locomotor ataxia, St. Vitus dance, all forms of rheumatism, contracted muscles and sore spots. The use of said device is not an effective treatment for lumbago, insomnia, catarrh, cold in the head, stopped up nose, influenza, writer's cramp, infantile paralysis, and deterioration of tissues. The use of said device cannot remove pain, soreness, and inflammation or relieve sore muscles and sprains nor can its use increase the activity of the alimentary canal, liver, kidneys, circulatory system, nerve trunk, and brain. The use of said device cannot maintain health in normal persons or restore health to sick persons. In fact, respondent's said device is capable only of producing a slight vibration and a small amount of heat and is of no therapeutic value in the treatment of the above named diseases or conditions of the body or in the treatment of any disease or condition of the body.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to said device has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's device.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 10, 1941, issued and subsequently served its complaint in this proceeding upon the respondent,

Findings

36 F. T. C.

Charlotte Brandenburg, charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before Arthur F. Thomas, a trial examiner of the Commission therefore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and 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, Charlotte Brandenburg, is an individual, with her office and principal place of business located at 804 Maverick Building, San Antonio, Tex. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing a device designated as an "Electro Magnetic Nerve Vitalizer" or an "Electro Magnetic Vibrator," which device is advertised for use in the treatment of various ailments and conditions of the human body.

PAR. 2. In the course and conduct of her aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said device, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of her said device in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. That respondent's device utilizes electric current and magnetic radiations to feed and revive the entire system, including all nerve

centers, and will relax and stimulate the nerves and revitalize, invigorate, and reactivate the entire nervous system.

2. That the use of respondent's device will promote and increase circulation, equalize the distribution of blood, and improve its quality, soothe and regulate the stomach, assist the stomach and aid digestion by breaking up nutritive matter, stimulate the flow of digestive juices, improve the assimilation and elimination of food, and relieve and correct constipation.

3. That respondent's device supplies an electrically generated, steady heat, which relaxes all congested conditions and relieves pain, soreness, and inflammation.

4. That the use of respondent's device assists nature in rebuilding new cells and tissue, reactivates the glands, and improves internal secretions.

5. That respondent's device has curative powers in the treatment of paralysis, arthritis, neuralgia, epilepsy, hysteria, insanity, locomotor ataxia, St. Vitus dance, all forms of rheumatism, sore spots, contracted muscles, insomnia, hardening of the arteries, and prostate gland trouble.

6. That the use of respondent's device is effective in the treatment of lumbago, catarrh, head colds, influenza, writer's cramp, infantile paralysis, and deterioration of the tissues.

7. That the use of respondent's device will defer hardening of the arteries, reduce blood pressure, deter apoplexy, and in restoring normal productive power, assist the bowels and kidneys to function properly, stimulate the action of the liver, permanently relieve all bladder troubles, strengthen and stimulate heart action, and tear down diseased tissues.

8. That respondent's device is effective in eliminating the causes of disease, maintaining health in normal persons, and restoring health to sick persons.

PAR. 3. Respondent's device is a very simply constructed mechanism which will produce a slight vibration, a small amount of heat, and create a very slight magnetic field. The heat produced by this device is not sufficient to have any effect where the application of heat might be indicated. The vibratory properties of this device are not sufficient to have any beneficial effect whatsoever, and the magnetic effect from the use of this device is so small that it would be incalculable and of no value. The use of this device has no therapeutic value in the treatment of any disease or condition of the human body, and any beneficial effect that might be obtained from the use of this device would be purely psychological.

Conclusion

36 F. T. C.

The use of respondent's device will not feed or revive the entire system, beneficially affect the nerve centers, stimulate the nerves, or have any beneficial effect upon any part of the nervous system. Its use has no effect upon any condition of the blood and will not promote or increase circulation, equalize the distribution of blood or improve its quality. Respondent's device is of no value in soothing or regulating the stomach, aiding digestion, or stimulating the flow of digestive juices, and will not improve the assimilation or elimination of food or relieve or correct constipation. The small amount of heat generated by this device is not sufficient to have any therapeutic value or beneficial effect upon congested conditions, and will not relieve pain, soreness, or inflammation. Respondent's device will not assist nature in rebuilding new cells or tissue, reactivate the glands, or improve internal secretions. This device has no therapeutic value or beneficial effect in the treatment of paralysis, arthritis, neuralgia, apoplexy, hysteria, insanity, locomotor ataxia, St. Vitus dance, rheumatism, sore spots, contracted muscles, insomnia, hardening of the arteries, prostate gland trouble, lumbago, catarrh, head colds, influenza, writer's cramp, infantile paralysis, or deterioration of the tissues. The use of respondent's device will not defer hardening of the arteries, reduce blood pressure, deter apoplexy, aid in restoring normal productive power, assist the bowels and kidneys to function properly, stimulate the action of the liver, strengthen or stimulate heart action, tear down diseased tissue, or have any value in the treatment of any diseases or conditions of the bladder. Respondent's device has no value in eliminating the causes of disease and will not maintain health in normal persons or restore health in sick persons.

PAR. 4. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to said device has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's device.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on 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 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, Charlotte Brandenburg, 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 her device or apparatus designated as "Electro Magnetic Nerve Vitalizer" or "Electro Magnetic Vibrator" or any other device or apparatus of substantially similar composition or construction or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

a. That respondent's device has any therapeutic value in the treatment of any disease or condition of the human body;

b. That the use of respondent's device will feed or revive the entire system or beneficially affect the nerve centers;

c. That the use of respondent's device will relax or stimulate the nerves or have any beneficial effect upon any part of the nervous system;

d. That the use of respondent's device has any effect upon any condition of the blood or that it will promote or increase circulation, equalize the distribution of blood, or improve its quality;

e. That the use of respondent's device has any beneficial effect in soothing or regulating the stomach, aiding digestion, or stimulating the flow of digestive juices or that it will improve the assimilation or elimination of food or relieve or correct constipation;

f. That the use of respondent's device has any therapeutic value or beneficial effect upon congested conditions or that it will relieve pain, soreness, or inflammation;

g. That respondent's device will assist nature in rebuilding new cells or tissue, reactivate the glands, or improve internal secretions;

Order:

36 F. T. C.

h. That respondent's device has any therapeutic value in the treatment of paralysis, arthritis, neuralgia, apoplexy, hysteria, insanity, locomotor ataxia, St. Vitus dance, rheumatism, sore spots, contracted muscles, insomnia, hardening of the arteries, prostate gland trouble, lumbago, catarrh, head colds, influenza, writer's cramp, infantile paralysis, or deterioration of the tissues;

i. That the use of respondent's device will defer hardening of the arteries, reduce blood pressure, deter apoplexy, aid in restoring normal productive power, assist the bowels and kidneys to function properly, stimulate the action of the liver, strengthen or stimulate heart action, tear down diseased tissue, or have any value in the treatment of any disease or condition of the bladder;

j. That respondent's device has any value in eliminating the causes of disease or that its use will maintain health in normal persons or restore health in sick persons.

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 device 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 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
SALLY'S FURS, INC.

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

Docket 4705. Complaint, Feb. 9, 1942—Decision, Mar. 15, 1943

Where a corporation, engaged in competitive interstate sale and distribution of fur garments; by means of newspaper advertisements or other advertising media, directly or by implication—

- (a) Represented that it owned or possessed a stock of furs of the market value of \$500,000, through such statements as "\$500,000 Stock—1940 Fashion Furs To Be Sacrificed For About \$250,000," etc.; when in fact it at no time possessed a stock of furs of such market value;
- (b) Falsely represented that its fur coats were styled or designed in Hollywood, Calif., the heart of the motion picture industry in the United States and a fashion center, or that they were copies of models of coats which originated there, through such statements as "New Hollywood Styled Fur Coats"; and
- (c) Represented that its 1940 styled coats and fur pieces were manufactured in a factory owned or operated by it; the facts being they had been made by an affiliated corporation which had since discontinued business, and it obtained some of its coats in the open market;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into a mistaken belief relative to said fur garments, thereby inducing its purchase thereof, because of such mistaken belief:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. George J. Beldock, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Sally's Furs, 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, Sally's Furs, Inc., is a corporation, organized and 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 17 West Forty-fourth Street, New York, N. Y.

Complaint

36 F. T. C.

PAR. 2. The respondent, Sally's Furs, Inc., is now, and for more than two years last past has been, engaged in the sale and distribution of fur garments, including ladies' coats. Respondent causes its said fur garments, including ladies' coats, when sold by it; to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in the various other States of the United States and in the District of Columbia.

The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said fur garments, including ladies' coats, 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, and for the purpose of inducing the purchase of its fur garments, including ladies' coats, the respondent has circulated and is now circulating among prospective purchasers throughout the United States, in advertisements in newspapers and trade journals and by other advertising media, including radio continuities, all of general circulation, various false statements and representations concerning its said fur garments, including ladies' coats. Among and typical of such false statements and representations are the following:

Sallys Greatest January Sale

\$500,000 STOCK—1940 FASHION FURS

TO BE SACRIFICED FOR ABOUT \$250,000

NEW

HOLLYWOOD

STYLED

FUR COATS

AT COST

BELOW COST

ADVANCED 1940 STYLES OF FUR MASTERPIECES

CREATED IN OUR OWN FACTORY * * *

Through the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that it owned or possessed a stock of furs of the value of \$500,000; that its fur coats were styled or designed in Hollywood, Calif., the heart of the motion picture industry in the United States and one of the fashion centers of the United States, or that they were copies of models of coats styled, designed or originated in Hollywood, Calif.; that its 1940 styles of fur coats and fur pieces were manufactured in a factory owned or operated by the respondent.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, the respondent, Sally's Furs, Inc., did not own or possess a stock of furs of the value of \$500,000

at the time said advertisements were disseminated. The fur coats sold and offered for sale by it were not designed or styled in Hollywood, Calif., nor were they copies of models of garments styled, designed or originated in Hollywood, Calif. The respondent was not and is not engaged in the manufacture of fur coats and such fur coats were not made in a factory owned, operated, or controlled by the respondent, but said respondent obtained its coats from outside sources in the open market.

PAR. 5. The use by the respondent of the foregoing false and misleading advertising, disseminated as aforesaid, had a tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false representations are and were true, and did induce the purchasing public to buy substantial quantities of respondent's fur coats as a result of such erroneous belief so engendered.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 9, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Sally's Furs, 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. No answer was filed by the respondent.

At a hearing held on January 22, 1943, for the purpose of taking testimony, a stipulation as to the facts was entered into, subject to the approval of the Commission, by and between counsel for the Commission and counsel for the respondent, and was read into the record in lieu of testimony in support of the charges stated in the complaint and in opposition thereto. It was stipulated that the Commission, without further evidence or other intervening procedure, may proceed upon the statement of facts (including inferences which it may draw from said stipulated facts) to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent 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 upon said complaint and stipulation, said

stipulation having been approved and accepted; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. The respondent, Sally's Furs, Inc., is a New York corporation with its place of business in the city and State of New York. It is now and for several years last past has been engaged in the sale and distribution of fur garments in commerce between and among the various States of the United States, causing said products, when sold, to be shipped from its place of business in the State of New York to purchasers in other States. At all times herein referred to, said corporation has been in competition with other corporations and with individuals, firms and partnerships also engaged in the sale and distribution of similar products in interstate commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, Sally's Furs, Inc., in connection with the sale or offering for sale of its said products in commerce as defined by the Federal Trade Commission Act, has disseminated advertisements, by means of newspapers having interstate circulation or by other advertising media, containing the following claims or representations:

Sally's Greatest January Sale

\$500,000 STOCK—1940 FASHION FURS

TO BE SACRIFICED FOR ABOUT \$250,000

NEW

HOLLYWOOD

STYLED

FUR COATS

AT COST

BELOW COST

* * * * *

ADVANCED 1940 STYLES OF FUR MASTERPIECES
CREATED IN OUR OWN FACTORY * * *

PAR. 3. Through the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that it owned or possessed a stock of furs of the market value of \$500,000; that its fur coats were styled or designed in Hollywood, Calif., the heart of the motion picture industry in the United States and one of the fashion centers of the United States, or that they were copies of models of coats styled, designed or originated in Hollywood, Calif.; and that its 1940 style

325

Order

coats and fur pieces were manufactured in a factory owned or operated by the respondent.

PAR. 4. As a matter of fact, respondent corporation did not at the time said claims or representations were made have or possess a stock of furs of a market value of \$500,000; the fur coats advertised as "Hollywood Styled" were not originally styled or designed in Hollywood, Calif., and were not copies of models of coats styled, designed, or originated in Hollywood, Calif. The respondent corporation was not at the times mentioned in the complaint engaged in manufacturing coats, and these coats were not manufactured in any factory owned or operated by the respondent but were manufactured by an affiliated corporation which has since discontinued business. Respondent obtained some of its said coats from outside sources in the open market.

PAR. 5. The use by the respondent of the foregoing misleading advertising, disseminated as aforesaid, had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into an erroneous and mistaken belief relative to the fur garments sold by the respondent, and the tendency and capacity to cause such portion of the public to buy substantial quantities of respondent's fur coats as a result of such erroneous belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon respondent herein, Sally's Furs, Inc., a 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Sally's Furs, 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 fur garments in commerce, as "commerce"

Order

38 F. T. C.

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

1. Representing, directly or by implication, that respondent's stock of furs has a market value of \$500,000, unless such stock does in fact have such value; or making any other exaggerated claims or statements concerning the value or magnitude of respondent's stock of merchandise.

2. Advertising, describing, offering for sale, or selling fur garments as "Hollywood Styled," unless such garments are in fact styled or designed in Hollywood, Calif., or are copies of models of coats styled or designed in Hollywood, Calif.

3. Representing, through the use of the phrase "Created in our own factory," or through the use of any other phrase of similar import, or in any other manner, that respondent is the manufacturer of its fur garments, unless and until respondent does in fact own, operate, or control the factory wherein such garments 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.

Complaint

IN THE MATTER OF
CASTLE COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 20, 1914*Docket 4785. Complaint, July 17, 1942—Decision, Mar. 15, 1943*

Where a corporation, engaged in interstate sale and distribution of jewelry, including its "Our Lady of the Miraculous Medal" pendants—

(a) Represented that the settings therein were precious stones, through referring thereto in newspaper advertisements as "birthstones," and displayed them on cards bearing such words, for example, as "January" and, immediately beneath, the word "Garnet";

The facts being settings in question were not precious stones as long understood from the word "birthstone," but were made of glass colored to simulate such precious stones as garnets, rubies, emeralds, etc.; and

(b) Falsely represented, through use of word "Manufacturers" on its letter-heads, that it was the manufacturer of the jewelry sold by it;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character of its business and composition of certain of its merchandise, thereby causing said public's purchase thereof 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. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. John Lockwood, 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 Castle 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Castle Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1374 Broadway, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of silver chains with "Our Lady of the Miraculous Medal Pendants" and other articles of

Complaint

36 F. T. C.

jewelry in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said articles of jewelry, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in said medal pendants and other articles of jewelry in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, Castle Co., Inc., in connection with the sale and distribution of said medal pendants, and other articles of jewelry and for the purpose of inducing the purchase thereof, makes, and has made, certain representations in its advertising literature, on its business stationery, and otherwise, to the effect that it is a "manufacturer" of jewelry and that the "Our Lady of the Miraculous Medal Pendants" which it sells contain "Your Own Birthstone."

PAR. 4. All of said representations, together with other similar statements appearing in respondent's advertising literature and otherwise, constitute representations to the purchasing public that the respondent manufactures the aforesaid medal pendants and other articles of jewelry which it sells and distributes, as herein alleged, and that certain of the settings in its medal pendants are precious or semiprecious stones.

PAR. 5. In truth and in fact said statements and representations are false and misleading in that neither do the medal pendants contain precious or semiprecious stones nor does the respondent manufacture the said medal pendants or other articles of jewelry sold and distributed by it as aforesaid.

PAR. 6. Many purchasers of articles of jewelry have a preference for those of such articles which may be purchased direct from the manufacturer in the belief that in so purchasing they may have the advantage of lower prices, better quality and other advantages which would not be available if said purchases would have to be made through middlemen, wholesalers or retailers.

For a long period of time the word "birthstone" has had, and still has, a definite and significant meaning in the minds of the purchasing public in that they know that diamonds, emeralds, rubies, garnets, and other precious or semiprecious stones have been, and still are, designated as the "birthstones" for particular months of the year.

PAR. 7. The respondent, by representing itself as being the manufacturer of the jewelry sold and distributed by it as aforesaid, and by representing that the settings in its medal pendants are "birthstones,"

leads the purchasing public into the mistaken and erroneous beliefs that respondent, in fact, manufactures the various articles of jewelry sold and distributed by it as aforesaid and that, in fact, the settings appearing in the medal pendants are precious or semiprecious stones.

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 within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 17, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Castle Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by 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, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Castle Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1374 Broadway, New York, N. Y. Respondent is now and for a number of years last past has been engaged in the sale and distribution of various articles of jewelry, including certain pendants described by respondent as "Our Lady of the Miraculous Medal" pendants.

PAR. 2. Respondent causes and has caused its jewelry, including such pendants, 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 has maintained a course of trade in its merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its pendants, respondent has represented through advertisements in newspapers that certain of the settings in the pendants are "birthstones." The cards on which the pendants are displayed and sold also make reference to such settings. For example, one of such cards bears the word "January," and, immediately beneath, the word "Garnet."

Through the use of these statements or legends, respondent has represented that the settings referred to are precious stones. The evidence shows that the word "birthstone" has long been associated in the public mind with precious stones, and that when the word is used to designate or describe a jewelry setting, the purchasing public or a substantial portion thereof understands that the setting referred to is a precious stone.

PAR. 4. The Commission finds that these representations are false and misleading in that the settings in question are not precious stones but are in fact made of glass colored in such manner as to simulate various precious stones, such as garnets, rubies, emeralds, etc.

PAR. 5. Respondent has also represented, through the use of the word "Manufacturers" on its letterheads, that it is the manufacturer of the jewelry sold by it. This representation is likewise false and misleading, as respondent is not a manufacturer but is engaged only in the retail sale of jewelry. There is a preference on the part of a substantial portion of the purchasing public for dealing with manufacturers, such preference being due to a belief on the part of such portion of the public that by dealing with manufacturers, lower prices and other advantages may be obtained.

PAR. 6. The Commission further finds that the use by respondent of the false and misleading representations set forth herein has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's business status and with respect to the character and composition of certain of its merchandise, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's merchandise as a result of the erroneous and mistaken belief engendered by such representations.

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 the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Castle 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 jewelry in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Birthstone" or "Garnet" or any other word which is indicative of a precious stone, to designate or describe any substance which is not in fact a precious stone.

2. Using the word "Manufacturers," or any other word of similar import, to designate or describe respondent's business; or otherwise representing, directly or by implication, that respondent manufactures the articles sold by it.

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

IN THE MATTER OF
ELECTRICAL ALLOY SECTION OF NATIONAL ELECTRICAL 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 4558. Complaint, Aug. 7, 1941—Decision, Mar. 16, 1943

Where a section of an unincorporated trade association together with its five member corporations, engaged in the manufacture, sale, and interstate distribution of electrical alloy resistance wire, and in active and substantial competition with each other and with others except insofar as such competition was restrained and suppressed as below set forth;

Entered into a combination, agreement, and understanding among themselves and through said section for the purpose of restraining price competition in the sale of the unpatented wire concerned; and pursuant thereto, and making use of said section, which aided and abetted acts in question, from time to time—

- (a) Fixed and maintained identical prices and uniform discounts and other conditions for the sale of electrical alloy resistance wire;
- (b) Exchanged price and discount information between and among themselves, with expectation and understanding that prices set forth in price lists and discount sheets would be adhered to until replaced by others similarly filed; and agreed they would not reduce their prices through assumption of any part of certain State sales taxes;
- (c) Adopted and maintained uniform resistance standards and other uniform standards for use in the manufacture of said wire, with the effect, in some instances, of fixing and maintaining identical prices therefor; and
- (d) Submitted uniform bids in connection with the sale of said wire;

With effect of unduly and unlawfully restraining and preventing price competition in the sale of electrical alloy resistance wire in commerce; of unduly restricting and restraining trade and such commerce; of eliminating competition; of creating in said manufacturers a monopoly in the sale of such products therein; of placing in them power to control and enhance prices; and of unreasonably restraining such commerce in said products:

Held, That such acts and practices under the conditions set forth, were all to the prejudice of the public; had a dangerous tendency unduly to hinder and prevent, and actually hindered and prevented, competition in the sale and distribution of unpatented electrical alloy resistance wire in commerce; had a dangerous tendency to create in said manufacturers a monopoly therein; and constituted unfair methods of competition in commerce.

Mr. Fletcher G. Cohn for the Commission.

Donovan, Leisure, Newton & Lombard, of New York City, for Electrical Alloy Section of National Electrical Manufacturers Ass'n, George B. Cumming and William J. Donald.

Mr. Francis E. Neagle, of New York City, for Wilbur B. Driver Co., and along with—

Ledward & Hinkson, of Chester, Pa., for Alloy Metal Wire Co., Inc.;

Lucking, Van Auken & Sprague, of Detroit, Mich., for Hoskins Manufacturing Co.;

Mr. John H. Hilliard, of New York City, for C. O. Jelliff Manufacturing Corp.; and

Mr. Joseph Kahrs, of Newark, N. J., for Driver-Harris Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717; as amended 52 Stat. 111; 15 U. S. C. A. sec. 41), 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, Electrical Alloy Section of the National Electrical Manufacturers' Association, hereinafter referred to as respondent Association, is an unincorporated trade association, having its principal office and place of business located at 155 East Forty-fourth Street, New York, N. Y. The membership of respondent Association is composed of five corporations engaged in the manufacture and sale of copper and nickel alloy wire.

The business and affairs of respondent Association are conducted under the active management and supervision of an executive secretary and managing director.

Respondent, George B. Cumming, is executive secretary of respondent Association with an office at 155 East Forty-fourth Street, New York, N. Y.

Respondent, William J. Donald, is managing director of respondent Association with an office at 155 East Forty-fourth Street, New York, N. Y.

PAR. 2. Respondent, Alloy Metal Wire Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in Prospect Park, Pa.

Respondent, Hoskins Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 4445 Lawton Avenue, Detroit, Mich.

Complaint

36 F. T. C.

Respondent, Wilbur B. Driver Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 152 Riverside Avenue, Newark, N. J.

Respondent, C. O. Jelliff Manufacturing Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal office and place of business located in Southport, Conn.

Respondent, Driver-Harris Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 201 Middlesex Street, Harrison, N. J.

Each of the respondents named in this paragraph is a member of respondent Association, and is engaged in the manufacture and sale of copper and nickel alloy wire. These respondents, hereinafter referred to as respondent manufacturers, also manufacture and sell many other items which are not involved in this proceeding.

PAR. 3. In the course and conduct of their respective businesses respondent manufacturers sell and distribute alloy wire to purchasers thereof located in various States of the United States, pursuant to which sales said commodities are shipped or transported to the purchasers thereof across State lines into States other than the State of origin of said shipments. Each of the respondent manufacturers, in the aforementioned manner, maintains a constant current of trade in commerce between and among different States of the United States.

PAR. 4. Respondent Association, and respondents, George B. Cumming and William J. Donald, are not engaged in commerce, but have aided, abetted, furthered, cooperated with, and were instrumentalities of, and parties to some, or all, of the conspiracies, combinations, agreements, and understandings 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. Respondent manufacturers in the regular course and conduct of their respective businesses have been, and are, in active and substantial competition with each other, and with other, and with other manufacturers and sellers of alloy wire in the sale thereof to purchasers for shipment in commerce between and among the several States of the United States, except to the extent to which such competition has been restrained, lessened, injured, and suppressed by the conspiracies, combinations, agreements, and understandings hereinafter set forth.

PAR. 6. Respondent manufacturers, respondent Association, and respondents, George B. Cumming and William J. Donald, its execu-

tive secretary and managing director, respectively, have entered into and for more than 3 years last past have been and are now carrying out, a conspiracy, combination, agreement, and understanding for the purpose of restricting, restraining, suppressing, and eliminating all price competition among themselves and creating a monopoly in themselves in the sale of alloy wire in commerce as aforesaid.

PAR. 7. Pursuant to said conspiracy, combination, agreement, and understanding, and in furtherance thereof, said respondents have done and performed, and still do and perform, among others, the following acts and things:

1. Fixed and maintained identical prices at which alloy wire is to be sold, and is sold, by respondent manufacturers.

2. Fixed and maintained uniform discounts and other conditions for the sale of alloy wire by respondent manufacturers.

3. Respondent manufacturers filed with respondent Association their price lists for alloy wire.

4. Respondent manufacturers adhered to filed prices until new and different prices were filed by them.

5. Respondent Association disseminated the price information so filed to all of its members.

6. Otherwise exchanged price and discount information between and among respondent manufacturers.

7. Fixed and maintained uniform resistance standards and other uniform standards for use in connection with the manufacture of the alloy wire sold and distributed by respondent manufacturers.

8. Respondent manufacturers have submitted uniform bids in connection with the sale of the alloy wire manufactured and sold by respondent manufacturers.

9. Used other means and methods designed to suppress and prevent price competition and to accomplish uniform prices and a monopoly on the part of respondent manufacturers in the sale of alloy wire in commerce as hereinabove described.

PAR. 8. 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 conspiracy, combination, agreement, and understanding.

PAR. 9. The conspiracy, combination, agreement, and understanding, 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 respondent manufacturers in the sale of alloy wire in commerce within the intent and

meaning of the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade in 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 respondent manufacturers the power to control and enhance prices; of unreasonably restraining such commerce in said products. The conspiracy, combination, agreement, and understanding, 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 7th day of August 1941, issued and served its complaint in this proceeding upon the respondents named in the caption hereof charging them with the use of unfair methods of competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, in violation of the provisions of said act. All of the respondents have duly filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed on behalf of the respective respondents and W. T. Kelley, chief counsel of the Federal Trade Commission, subject to the approval of the Commission, may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument, the filing of briefs, or the filing of a report upon the evidence by a trial examiner for the Commission. The said stipulation further provided that the respondent Electrical Alloy Section of National Electrical Manufacturers Association, an unincorporated trade association, should be bound legally by any order which the Commission might enter properly against it pursuant to said stipulation, by service, as provided under the rules of the Commission, upon the managing director of National Electrical Manufacturers Association. Thereafter, this proceeding regularly came on to be heard before the Commission upon said complaint, answers, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Electrical Alloy Section, is a section of the National Electrical Manufacturers Association, an unincorporated trade association, having its principal office and place of business located at 155 East Forty-fourth Street, New York, N. Y., and said section is hereinafter referred to as "respondent section." During the times hereinafter mentioned the membership of said respondent section has from time to time included the five corporate respondents hereinafter in paragraph 2 described, which five corporate respondents are hereinafter referred to as "respondent manufacturers"; the respondent, C. O. Jelliff Manufacturing Corporation, was a member of respondent section from January 19, 1934, through December 31, 1940; respondent, Alloy Metal Wire Co., Inc., is, and has been, a member of respondent section since August 25, 1933, except during the period from November 1, 1934, to July 1, 1937. The only other members of respondent section at any time were Geo. W. Prentiss & Co., which was a member of said section during all of the times hereinafter mentioned up to October 23, 1939, and Walter Gilby Alloy Co., which was a member of the section from August 25, 1933, to July 1, 1935, both of said companies having theretofore ceased manufacturing and selling copper-nickel alloy resistance wire.

The respondent section has officers consisting of a chairman and a vice chairman elected from the personnel of the membership of the section. Prior to February 7, 1939, said respondent section also had a secretary elected from the personnel of the membership of the section.

From 1935 to December 19, 1941, respondent, George B. Cumming, was elected from the staff of the National Electrical Manufacturers Association annually by said respondent section as executive secretary of said respondent section, his office being at 155 East Forty-fourth Street, New York, N. Y., and said respondent, George B. Cumming, acted as executive secretary of said section.

PAR. 2. Respondent, Alloy Metal Wire Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Prospect Park, Pa.

Respondent, Hoskins Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of

the State of Michigan, with its principal office and place of business located at 4445 Lawton Avenue, Detroit, Mich.

Respondent, Wilbur B. Driver Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 152 Riverside Avenue, Newark, N. J.

Respondent, C. O. Jelliff Manufacturing Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal office and place of business located in Southport, Conn.

Respondent, Driver-Harris Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 201 Middlesex Street, Harrison, N. J. All of said respondent manufacturers are, and at all times mentioned herein have been, engaged in the manufacture and sale of electrical alloy resistance wire, some of which is patented and some unpatented. The facts found herein relate only to unpatented electrical alloy resistance wire.

PAR. 3. In the course and conduct of their respective businesses, each of respondent manufacturers sells and distributes electrical alloy resistance wire to purchasers thereof located in various States of the United States, and pursuant to such sales, said products are shipped or transported to the purchasers thereof across State lines into States of the United States other than the State of origin of said shipments. Each of respondent manufacturers, in the aforementioned manner, has maintained, and still does maintain, a constant current of trade in said products in commerce between and among the several States of the United States.

PAR. 4. Respondent manufacturers in the regular course and conduct of their respective businesses have been, and are, in active and substantial competition with each other and with other manufacturers and sellers of electrical alloy resistance wire in the sale thereof to purchasers for shipment in commerce between and among the several States of the United States, but such competition has been restrained, lessened, injured, and suppressed by the combinations, agreements, and understandings hereinafter set forth.

PAR. 5. From time to time during the periods hereinafter mentioned, respondent manufacturers (except respondent, Alloy Metal Wire Co., Inc., for the period hereinbefore mentioned in paragraph 1) and Geo. W. Prentiss & Co., and Walter Gilby Alloy Co. (at the times these two companies were members of respondent section) as the sole members of said respondent section, held meetings which were at-

tended by representatives of some or all of said respondent manufacturers, and at which, from September 29, 1935 to December 19, 1941, respondent, George B. Cumming, acted as executive secretary of said respondent section.

PAR. 6. All of respondents herein have stipulated that the respondent manufacturers, at the time when they were, with the addition of Geo. W. Prentiss & Co., the only members of respondent section, did enter into a combination, agreement, and understanding among themselves for the purpose of restraining price competition among themselves in the sale of electrical alloy resistance wire in the commerce hereinbefore described, and pursuant thereto and in furtherance thereof, have, from time to time, done and performed the following acts and things:

1. Fixed and maintained identical prices at which electrical alloy resistance wire is to be sold, and is sold, by respondent manufacturers.

2. Fixed and maintained uniform discounts and other conditions for the sale of electrical alloy resistance wire by respondent manufacturers.

3. Exchanged price and discount information between and among respondent manufacturers.

4. Adopted and maintained uniform resistance standards and other uniform standards for use in connection with the manufacture of the electrical alloy resistance wire sold and distributed by said respondent manufacturers with the effect, in some instances, of fixing and maintaining identical prices at which said wire was to be sold and was sold by said respondent manufacturers.

5. Submitted uniform bids in connection with the sale of the electrical alloy resistance wire manufactured and sold by respondent manufacturers.

The Commission finds that the aforefound agreement, understanding, and combination among the respondent manufacturers was entered into, through and by means of the respondent section, as well as by other means and methods herein set forth, and further, that the purpose and effect of said combination, agreement, and understanding were aided, abetted, and furthered by the respondent section, which often was used by the respondent manufacturers as an instrumentality for effectuating such purpose.

PAR. 7. Each of said respondent manufacturers has stipulated that they acted in concert and cooperation with one or more of the other respondent manufacturers in doing and performing the acts and things herein found, in furtherance of said combination, agreement, and understanding.

PAR. 8. At the meeting of respondent section on September 9, 1935, the said section adopted a motion that each member should send to respondent, George B. Cumming, as executive secretary of said respondent section, his published price list, terms, and conditions of sale with instructions concerning distribution of such information. At this meeting, the respondent section also adopted a resolution that the section approve the investigation of closed-business transactions and that the investigation should be conducted by respondent George B. Cumming as executive secretary of respondent section.

Under date of September 25, 1935, respondent George B. Cumming, as executive secretary of respondent section, wrote to respondent manufacturers, as members of respondent section, to the effect that the counsel for the National Electrical Manufacturers Association had disapproved the action of the respondent section in connection with the voluntary distribution of published prices, and further, that the said counsel also had disapproved the aforementioned motion of respondent section regarding the investigation of closed-business transactions "because it provides that closed-business transaction statistical activities shall be conducted by the executive secretary," and that "was contrary to the ruling of the law committee and to the board of governors which has specifically ruled that such statistics cannot be collected other than through the statistics department of the Association."

At the next meeting of the respondent section, which was held on November 13, 1935, it was resolved that the previous action of the respondent section regarding voluntary distribution of published prices be rescinded and that the matter "be in the hands of each member individually with respect to his own prices." Also, the action of respondent section, with respect to closed transactions likewise was rescinded.

The minutes of subsequent meetings of the said respondent section do not disclose that the subject of voluntary distribution of price lists or the subject of closed-business transactions was considered or discussed at any subsequent meeting or meetings of said respondent section.

However, in his annual report to the members of respondent section, Stanley M. Tracy, secretary of the section, on September 16, 1936, stated that "the matter of distribution of published prices was considered at the first two meetings during the year and finally disposed of by recommending that each member should mail his individually prepared price sheets to the other members of the section, as well as the trade" and that "the section considered the advisability of in-

investigating closed-business transactions in accordance with the standard NEMA procedure. After some discussion it was decided that the section would not benefit from such an activity." This annual report was prepared for Mr. Tracy by respondent George B. Cumming, as executive secretary of respondent section.

The Commission concludes and finds that the exchange of price lists directly among respondent manufacturers was the result of their concerted action through respondent section.

PAR. 9. On May 16, 1935, one of the respondent manufacturers wrote a second respondent manufacturer, that he was in receipt of a letter from a third respondent manufacturer to the effect that it was agreeable to this third respondent manufacturer to use the catalog figures of the first respondent manufacturer "as a basis for price determination, until such time as there is a reprint of their own pamphlet."

PAR. 10. On May 5, 1937, one of respondent manufacturers wrote another respondent manufacturer requesting price and delivery terms on certain alloy wires, to which letter was attached a plain sheet reading as follows:

You can guess that my request for this information is due to the fact that we have been told our prices are high, and that customer is purchasing at a lower price.

If you check with us, we feel sure that our figures are right and the gentleman is lying.

I would suggest that you destroy this plain sheet.

On May 7, 1937, a reply to the aforementioned letter of May 5, 1937, was written and the concluding paragraph of said letter of reply reads as follows:

Our figures have been checked, and we feel that what we quote above is entirely correct. However, if you are at variance with any of these figures through any of your own matriculations, we would like very much to have you check with us again.

PAR. 11. A salesman of one of respondent manufacturers, reporting to his superior on May 4, 1937, of his call on another respondent manufacturer, stated:

Spoke about Capitol situation * * * Thought our practice of loaning colling machines was unfair advantage. Had agreeable understanding and will report verbally. Thought exchange of credit information would be helpful and intended to raise the question at meeting in N. Y. tomorrow.

PAR. 12. On August 18, 1938, an official of one of the respondent manufacturers wrote an official of another of said respondent manufacturers, addressing the letter as "Personal" as follows:

There seems to be a little discrepancy in some of the prices that we are finding true in our own organization, and in order to greatly help me, I would appreciate

Findings

36 F. T. C.

It very much if you would give us your price with method of figuring on the following: * * *

To this letter, the reply, dated August 24, 1938, which likewise was marked "Personal" read, in part, as follows:

Let me say at the out-set, that you certainly picked out two tough coils. If we sold many coils of this type I am afraid all of our time would be consumed in figuring prices. Of course, these particular coils are special and are not covered by any established price list. I have therefore figured as far as I can go in accordance with the established practice and have then added * * *

* * * In this connection, Mr. (herein was given the name of an official of a third respondent manufacturer) has been endeavoring to set up standards which would cover every type of coil that might be ordered * * * Until such time as definite action has been taken I would say that you would be free to do as you please on all types of special coils which are not covered in the established price schedule. Of course, your price may be higher or lower than competitors, but I don't know of any other answer.

PAR. 13. On May 7, 1940, one of the respondent manufacturers wrote another respondent manufacturer as follows:

SUBJECT: Exports to Italy

Relative to our telephone conversation of Friday last, we, like yourselves, are a little divided as to what ought to be done.

The Industry Meeting is next Saturday at Hot Springs, and we would be content to allow the matter to rest until it could be discussed there.

We can't see any better solution than the above, even though it may not be very satisfactory.

Will see you at Hot Springs.

PAR. 14. On July 31, 1940, one of respondent manufacturers wrote another respondent manufacturer as follows:

Will you please give me the details of your practice covering freight charges on orders totalling less than 100 pounds. For example, if you have an order for 10 pounds of nickel chromium resistance wire and you ship it via parcel post, do you add the postage to the invoice? Or, is it your practice to prepay parcel post, express or freight charges on all orders irrespective of the quantity involved?

PAR. 15. The Commission infers, and therefore finds, that the filing or interchange of current price lists and discount sheets among respondent manufacturers, as herein described and found, was predicated on the expectation and understanding that the prices set forth in such lists and sheets would be adhered to until and unless they were replaced by other price lists and discount sheets similarly filed or interchanged.

The Commission also finds that pursuant to, and as a part of, the combination, agreement, and understanding hereinbefore found in

paragraph 6, that the respondent manufacturers wrote the letters, performed the acts and did the things set out in paragraphs 9, 10, 11, 12, 13, 14, and 20.

PAR. 16. At a meeting held on June 13, 1933, at the offices of the National Electrical Manufacturers Association, the minutes of which are entitled "Organization Meeting—Electrical Alloy Section" and at which were present representatives of respondent manufacturers, Driver-Harris Co., Hoskins Manufacturing Co., Alloy Metal Wire Co., and Wilbur B. Driver Co. (the successor to Gilby Wire Co.), together with representatives of Geo. W. Prentiss & Co., Walter Gilby Alloy Co., and Somers Brass Co., all of whom, with the exception of Somers Brass Co., subsequently became members of respondent section at the dates hereinafter set forth, the following resolutions were adopted:

RESOLVED that this group of manufacturers form an association and elect as officers a chairman, a vice-chairman, and secretary and treasurer, and that the association make application to NEMA for affiliation with that group as a Section.

* * * * *

RESOLVED that the name of this association shall be the Electrical Alloy Section of NEMA.

At this meeting it was also

RESOLVED that no contracts or orders for products of this association shall be taken by a member of the association for a longer period than three (3) months beginning October 1, 1933, and that in the meantime no contracts are to be made for delivery after December 31, 1933, and that such contracts must cover a specific amount of material, and full and complete shipments must be taken by the customer; also, that a standard form of contract be established for use by members of the Association.

On June 23, 1933, the Board of Governors of National Electrical Manufacturers Association "authorized the formation of an Electrical Alloy Section."

At a meeting of the aforementioned manufacturers held on August 10, 1933, at National Electrical Manufacturers Association headquarters, the minutes of which are entitled "Electrical Alloy Section" a resolution was passed reading as follows:

RESOLVED that the Electrical Alloy Section of NEMA extend a vote of thanks to Mr. Berresford, Managing Director of NEMA, for the help which he has extended to this Section in their organization work.

At this meeting of August 10, 1933, the following resolution also was passed:

RESOLVED, that the minutes of the meeting of manufacturers of high nickel alloy wire and strip, held on June 13, 1933, before becoming a Section of NEMA, be ratified as corrected.

Findings

36 F. T. C.

At this meeting of August 10, 1933, there was also passed a resolution that "Inasmuch as it has been the practice of members of this section to sell materials manufactured by them on the basis of printed net price lists or price lists with discount sheets and fixed terms of sale, which are distributed to the trade, it will be the policy of members of this section to file said schedules as required by clause X of the Code of Fair Competition for the Electrical Manufacturing Industry," under the National Industrial Recovery Act (hereinafter called the "Basic code") (National Electrical Manufacturers Association was designated as the code authority under the basic code. Pursuant to paragraph XII of the Basic Code, a supervisory agency for the Wire and Cable Subdivision was set up. Paragraph X of the basic code provided that "If a supervisory agency determined that in any branch or subdivision of the electrical manufacturing industry, it has been the generally recognized practice to sell a specified product on the basis of printed net price lists, or price lists with discount sheets and fixed terms of payment, which are distributed to the trade, each manufacturer of such product shall, within 10 days after notice of such determination, file with the supervisory agency a net price list or a price list and discount sheets, as the case may be, individually prepared by him, showing his current prices, or prices and discounts, and terms of payment, and the supervisory agency shall immediately send copies thereof to all known manufacturers of such specified product.")

At this same meeting of August 10, 1933, there also was adopted a resolution declaring it to be "the consensus of opinion of the members of the Electrical Alloy Section that certain unfair trade practices existing in the industry should be included in the Supplemental Code to the Code of Fair Competition for the Electrical Manufacturing Industry, as follows:"

The supplying to customers of any of the following materials or services without making adequate charge:

Wire in the form of helical coils;

Resistance wire and ribbon, hot and cold, rolled, with resistance limits less than standard;

Resistance wire and ribbon in intermediate sizes;

Any wire or ribbon, hot or cold rolled, in straightened or cut length;

Any wire or ribbon in special surface finishes involving an increased cost in manufacture;

The shipping of spools on which wire or ribbon is wound (which charge must be paid by customer when invoice covering material is paid).

The board of governors of National Electrical Manufacturers Association approved the applications for membership in said Association and affiliation with the Electrical Alloy Section of the respondent,

Driver-Harris Co., at its meeting on July 11, 1933, and of the respondents, Hoskins Manufacturing Co., Alloy Metal Wire Co., Inc., Wilbur B. Driver Co. (then known as Gilby Wire Co.) and of Geo. W. Prentiss & Co., and Walter Gilby Alloy Co., at its meeting on August 25, 1933.

On August 20, 1933, the supervisory agency for the wire and cable subdivision of the electrical manufacturing industry appointed under the basic code, issued a notification to manufacturers of electrical resistance wire and ribbon and strips composed of alloys of nickel chromium, nickel iron and chromium, nickel copper, and nickel steel, directing them to "file with this supervisory agency for distribution, as required by said code, to all other manufacturers of the products specified above, at the offices of National Electrical Manufacturers Association, 155 East Forty-fourth Street, New York City, * * * copies of your price lists, or price lists and discount sheets, showing your current prices for fixed terms of sale, payment, delivery, and other conditions affecting the sale price on the products specified above."

At the meeting which was held on September 28, 1933, at the headquarters of the National Electrical Manufacturers Association, the minutes of which meeting are entitled "Electrical Alloy Section," the respondent section approved the minutes of the meeting of August 10, 1933, and these minutes were ordered to be filed with the secretary "after approval by NEMA counsel."

At this same meeting of September 28, 1933, respondent section adopted the following resolution:

RESOLVED that the suggestion that an extra price of ten percent (10%) be charged on orders for weaving wire, and especially Monel Metal and Pure Nickel, where the customer specified the number of spools on which the wire is to be wound, be referred to the Standing Committee for action as to whether or not this is an unfair trade practice.

At the same meeting the following resolution was also adopted:

RESOLVED that the Secretary instruct the supervisory agency that this Section is now ready to file schedule of prices on the following, and ask that a call be sent out for such filing:

- (1) Additional prices for other than standard resistance tolerances;
- (2) Methods of determining prices for intermediate sizes of both wire and ribbon;
- (3) Prices for straightening and cutting to length both wire and rod;
- (4) When material is sold for net prices, these prices are to be figured at the published list prices less discount to third decimal place and all other decimals disregarded.

The minutes of the aforementioned meetings of June 13 and August 10, 1933, were submitted to counsel for National Electrical Manufacturers Association under date of September 22, 1933, and on October 2, 1933, said counsel advised the section that he disapproved the

resolution contained in the June 13, 1933, minutes relative to contracts or orders, and also advised the section with reference to the resolution adopted at the August 10th meeting regarding the practice of members of the section to sell on the basis of printed price lists that "It is for the supervisory agency to determine whether or not any branch of the industry shall go on a printed price list basis. There is, however, no objection to the section's indicating what has been their practice."

On October 18, 1933, members of the respondent section were advised by its secretary that counsel for National Electrical Manufacturers Association had returned the minutes of the September 28, 1933 meeting, with his approval, with a comment that it was beyond the power of the "Supervisory agency" to tell any manufacturer how he should figure his net prices. (The minutes of subsequent meetings of respondent section do not disclose that the Secretary of said section instructed the supervisory agency in accordance with the aforementioned resolution of September 28, 1933.) Counsel also commented that if the aforementioned resolution adopted at the meeting of September 28, 1933, regarding an extra price of ten percent to be charged on orders for weaving wire was intended to be voted by the section as an unfair trade practice which should not be indulged in by any members of the section, that he then disapproved same, but, if it was intended as being proper for submission in a supplemental code, then no action should be taken regarding such matter until the supplemental code had been approved.

At the meeting of respondent section held on November 8, 1933, which was the next meeting of said section after that of September 28, 1933, the section modified the resolution relative to the filing by members of printed price lists to read as follows:

RESOLVED, that it has been the practice of members of this section to sell materials manufactured by them on the basis of printed net price lists or discount sheets at fixed terms of sale which are distributed to the trade.

At the same meeting of respondent section on November 8, 1933, in accordance with the aforementioned advice given by counsel for the National Electrical Manufacturers Association on October 2, 1933, the respondent section passed a resolution deleting from the minutes of June 13, 1933, the resolution regarding contracts and orders for products of the members of respondent section.

Also, at this meeting of respondent section of November 8, 1933, the said section rescinded its resolution of September 28, 1933, which referred to the Standing Committee for action as to whether or not it was an unfair trade practice to charge an extra price of ten percent on orders for weaving wire where customer specifies the number of spools on which the wire is to be wound.

PAR. 17. At the meeting of the respondent section on January 15 and 16, 1934, a discussion took place as to items which should be submitted to the NEMA Code Committee for action, and which were to be submitted to the authorities at Washington as a supplemental code for respondent section. Among the items which the respondent members, together with the other members, of respondent section believed should be included in a supplemental code were; that the terms of sale of each member should be uniform and uniformly applied; that no contracts or orders should be accepted for a longer period than three months; and that when material is sold for net prices, these prices should be figured at published list less discount to third decimal place with all other decimals disregarded.

At the next meeting of respondent section which was on May 2, 1934, respondent section voted that the committee previously appointed complete the recommendation for the supplemental code and submit it to the members for approval.

At the meeting of respondent section on November 15, 1934, the section voted that a committee be appointed to draw up the supplemental code for submission to the members for approval and upon receiving such approval, the code was then to be submitted to NEMA Code Administration Department for approval and submission to the authorities in Washington. It was also voted that the code committee formulate a plan in the supplemental code for investigating complaints regarding "violations of unfair trade practices or violations of price filings" under the NRA code, "and arrange a method of payment of expenses to cover the cost of investigating complaints" under the NRA code.

A supplemental code, which was prepared by the Special Code Committee appointed at the aforementioned meeting of November 15th, was reviewed and considered by the respondent members of respondent section under date of December 14, 1934. At this meeting, the said respondent members unanimously approved, among others, the following sections of the proposed supplemental code:

Article III, Section 4.—When the Supervisory Agency shall have given notice of determination that any specified product shall be sold in accordance with net price lists and/or price lists with discount sheets and/or fixed terms of sale or payment, no employer shall bid, quote, offer to sell or sell any modification of such specified product on which price schedules have been filed except in accordance with the provisions of this section unless such employer file, in accordance with Article X of the Basic Code, price schedules covering such modifications.

Article IV, Section 1.—Offering to sell or selling below cost by any employer may be done under the following conditions:

(a) With respect to any product sold competitively under net price lists and/or price lists with discount sheets and/or fixed terms of sale or payment

Findings

36 F. T. C.

(herein referred to as price schedules) filed with the Supervisory Agency, any employer may file revised price schedules to meet the filed lower price schedules of any other employer, provided that the Supervisory Agency is advised that selling below cost is involved at the time the revised price schedules to meet competition are filed with the Supervisory Agency.

(b) With respect to any product or specifications on which price schedules have not been filed with the Supervisory Agency, any employer may meet the proven quoted price made on equal or equivalent products of specifications by any other employer, provided proper notification of such intent has been given to the Supervisory Agency.

At the meeting of respondent section on January 31, 1935, the section voted to add to the supplemental code an amendment to article 3, section 4 (d) relating to "Straightening and cutting to length." The section also voted that "the uniform resistance figures for individual sizes, conforming with the specific resistance of the alloy and with the figures shown" in catalogs of two respondent manufacturers, "be recommended as standard to manufacturers who are revising their catalogs." The section further voted to amend the supplemental code by substituting the words "30 days" for the word "net" in article 3, section 1, and to empower the officers of the Supplemental Code Committee "to negotiate and bring to a conclusion with any changes which may be made mandatory, the supplemental code which has now been prepared and approved." The Commission infers that the afore-found amendment substituting the words "30 days" for the word "net" related to an agreement among respondent manufacturers concerning discounts and terms of sale.

The supplemental code which was so prepared and approved by the section did not provide: that the terms of sale of each member should be uniform and uniformly applied; that no contracts or orders should be accepted for a longer period than 3 months; and that when material is sold for net prices, these prices should be figured at published list less discount to third decimal point with all other decimals disregarded.

The supplemental code so prepared and approved was never approved by the President of the United States in accordance with the provision of the National Industrial Recovery Act. The minutes of subsequent meetings of respondent section do not disclose any further discussion of the supplemental code.

PAR. 18. The minutes of the meeting of respondent section held on March 17, 1936, contain "proposed NEMA standards covering electrical resistant alloys," and indicate, when approval by the section, that they would become the "adopted standard" and would be "effective when approved."

Rule 6 of the Organization and Working Rules of the National Electrical Manufacturers Association, of which respondent section is a section, defines an "adopted standard" to be:

A practice of construction to the observance of which in the interest of the public all members of the Association should adhere, and in no event should a member of the Association represent as standard any product falling below such standard.

It is distinctly understood that Adopted Standards relate only to products commercially standardized and subject to repetitive manufacture and do not apply to products built to meet the special requirements of individual customers.

PAR. 19. The minutes of the meeting of respondent section of August 30, 1938, state:

Return of Reels

The attention of the Section was directed to the fact that one of the large users of the products of the Section had requested the members to use a clause reading as follows:

"Spools or reels will be charged and credit given for same when returned in good condition by freight, charges prepaid to destination, within twelve months from date of shipment."

On Motion duly made, seconded and carried,

IT WAS RESOLVED that the Section recommend to its members the use of this clause.

Under date of September 16, 1938, respondent George B. Cumming, as executive secretary of respondent section, wrote the following letter to respondent manufacturers, as members of respondent section:

In returning approved minutes of meeting of the Electrical Alloy Section held August 30, 1938, Mr. Neagle, Counsel, commented as follows:

"The Section should also be advised that its resolution appearing on page 103 with reference to the return of reels should be rescinded. The Federal Trade Commission takes the position that the inclusion of a provision covering the return of reels is not proper in a Section Standard which, of course, carries no recommendation with it and the Federal Trade Commission therefore would consider it a more serious violation of the law if the Section recommended the use of the clause with regard to payment for reels which is quoted."

The minutes of respondent section of November 1, 1938, state:

The entire item and motion headed "Return of Reels" shown on page 103 should be deleted from the minutes as this minute has been disapproved by NEMA Counsel.

The minutes of subsequent meetings of respondent section do not disclose that the subject of return of reels was thereafter considered or discussed at any meeting or meetings of said respondent section.

PAR. 20. On September 14, 1938, one of the respondent manufacturers wrote another respondent manufacturer as follows:

At the last meeting of NEMA, there was a good deal of talk about marking each invoice containing spools to the effect that spools must be returned within a certain length of time.

Findings

36 F. T. C.

The reply to this letter, which reply is dated September 15, 1938, read, in part, as follows:

In reply to your letter of September 14, if you will refer to the reverse side of our invoice #9050, you will see a sheet of conditions of sale. No. 7 of these states that full credit will be given for spools returned prepaid in good condition before the expiration of six months.

At the recent Industry meeting it was suggested that this six months' period be extended to twelve months. In actual practice credit is frequently given for spools after the six months' period has expired, so that I had no basic opposition to the extension of the period of time. I did feel, however, that if twelve months were the stated time customers might show a tendency toward further laxness in this regard, and an additional investment in spools would be required for normal requirements. This is problematical and of no great consequence, so that I am perfectly willing to take such steps as the industry may deem advisable.

PAR. 21. The minutes of the meeting of respondent section on May 11, 1940, contain, among other matters, the following:

ILLINOIS STATE OCCUPATIONAL TAX

The Section further considered the statement from the Retailers Occupational Tax Division of the Illinois Department of Finance covering a new ruling in that State, effective as of April 1, 1940. This statement is based on the United States Supreme Court ruling in the New York City sales tax case and its application to certain phases of interstate commerce:

"Tax liability under the Retailers' Occupational Tax Act is incurred when sales at retail are made in this State, even though the property sold is transported directly to the buyer from a point outside this State, whenever the seller is engaged in the business of selling tangible personal property in this State, and whenever possession of such property is transferred to the buyer in Illinois.

"It is immaterial whether the purchase or contract precedes or follows the interstate shipment or whether the shipment is made f. o. b. point of origin or f. o. b. destination. Contracts or agreements purporting to require shipments of the property sold from points outside of Illinois or transfers of possession of such property outside of Illinois will not operate to exempt sellers where the tax would otherwise apply."

The above regulation presents a new problem to all Michigan companies selling through an Illinois agent and where the merchandise is shipped from Michigan into Illinois. Previous to April 1 no Illinois sales tax applied on such a sale. Since April 1, that type of sale is taxable under the Illinois 3% sales tax. Illinois does not make any exemption for Industrial Processing. * * *

Following the discussion, one of the members advised that his attorney had suggested a clause to be inserted in quotations reading as follows:

"In addition to the above-mentioned price, Buyer agrees to pay Seller the amount of any and all taxes now or hereafter assessed or imposed by any Municipal or State government, or by the United States, on products covered by this contract, unless Buyer shall be entitled by law to an exemption from said tax and shall furnish Seller with proper exemption certificate when shipping instructions are given."

It was pointed out that this might be somewhat lengthy and the Executive Secretary (respondent George B. Cumming) was instructed to ascertain the

type of clause used by the General Electric Company in this situation, and this clause follows:

"The amount of any present or future sales or other similar tax applicable to apparatus sold hereunder shall be added to the prices contained herein and paid by the purchaser in the same manner and with the same effect as if originally added thereto."

The Executive Secretary (respondent George B. Cumming) was instructed to obtain the clause used by the Westinghouse Company, which is as follows:

"Prices do not include State or local taxes based on or measured by sales, which tax or taxes will be added to the prices where applicable."

The Executive Secretary (respondent, George B. Cumming) was instructed to circulate this information among the members and to ask them to indicate which clause appeared most suitable to them, following which the Executive Secretary is to advise all the members concerning the relative popularity of the various clauses submitted.

Pursuant to said instructions, said respondent, George B. Cumming, as executive secretary of respondent section, circularized the members of said section, and but two of the members having replied thereto, respondent Cumming did not advise the members of respondent section concerning the relative popularity of said clauses.

The Commission infers that the foregoing activities with regard to the relation between prices and sales taxes were based on common consent and understanding among respondent manufacturers that their prices would not be reduced through their assumption of any part of such taxes.

PAR. 22. Under date of July 29, 1937, respondent, George B. Cumming, as executive secretary of respondent section, sent the respondent manufacturers, as members of respondent section, copies of the minutes of the meeting of July 20, 1937, together with a letter in which he stated, "These minutes are being circulated in the absence of counsel who is on vacation. They will be subject to his comment upon his return about September 10." Said minutes were approved by counsel on September 8, 1937. At this meeting of July 20, 1937, of respondent section, the said respondent section considered the matter of offering technical advice to the Electric Range Section and the Domestic Appliance Section of National Electrical Manufacturers Association, relative to the causes of increased life of electric heating units, and thereafter adopted a resolution "that the subject of increased life of heating units should be laid on the table, and the executive secretary was instructed to discuss this matter with the executive secretary of the Domestic Appliance and Electric Range Sections and report back to the next meeting."

The minutes of subsequent meetings of said respondent section do not disclose that this subject was thereafter considered or discussed in

collaboration with the Electrical Range or Domestic Appliance Section of National Electrical Manufacturers Association.

PAR. 23. At the meeting of respondent section on October 5, 1937, the following resolution was passed:

It was RESOLVED that the Chairman appoint a Committee to work out suitable procedure with the Statistical Department of NEMA so that the various members would be apprised of companies to whom credit would be no longer extended by any member of the Section.

Under date of October 25, 1937, respondent, George B. Cumming, as executive secretary of respondent section, wrote the following letter to respondent manufacturers, as members of respondent section:

I am enclosing copy of the minutes of the October 5th meeting, together with the comments of Counsel, which are as follows:

"On page 86 the minutes recite a resolution that the Chairman appoint a Committee to work out a procedure with the Statistical Department so that the various members would be apprised of companies 'to whom credit would be no longer extended by any member of the Section.'

"It is improper for the members of the Section to agree that they will not extend credit to any particular person or persons. Such action constitutes a boycott. The resolution in that respect, therefore, is disapproved and should be referred to the Board of Governors.

"The NEMA statistical procedure, as approved by the Board of Governors, does not provide for credit reporting and the action of the Section, therefore, should be referred to the Law Committee for consideration at its meeting on October 24th and for recommendation to the Board."

It is obvious that the minutes do not properly describe the intention of the Section and this matter will, therefore, be considered under the head of "Unfinished Business" at the next meeting of the Section.

The minutes of the meeting of respondent section of January 11, 1938, state:

It was further resolved that the minutes of October 5, 1937, be approved, subject to the following correction, so that the minutes would more accurately describe what took place at that meeting. The resolution contained in the item on Page 86 entitled—"Credit Information" should be read as follows:

"It was RESOLVED that the Chairman appoint a Committee to consider the possibility of the exchange of certain credit information along the following lines:

"When a member company felt doubtful concerning the credit standing of a customer or prospective customer, he should be able to inquire of the NEMA Statistical Department concerning overdue accounts of such customer with other members of the Section and to obtain in return the total amount of overdue indebtedness and the maximum and minimum period in days which these accounts are overdue."

At this meeting a procedure for providing such credit information was adopted by respondent manufacturers and Geo. W. Prentiss & Co. as the members of respondent section. This procedure was developed by and proposed to the section by the Committee on Credit Information

after consultation with and approval by counsel. The counsel had approved this procedure on December 6, 1937. Respondent, George B. Cumming, assisted the Committee on Credit Information in its contact with the National Electrical Manufacturers Association Statistical Department and National Electrical Manufacturers Association counsel, and in the preparation of the proposed procedure. The proposed procedure as set forth in exhibit A attached to the minutes of the meeting of the said respondent section held on January 11, 1938, was as follows:

PROCEDURE FOR CONDUCT OF ELECTRICAL ALLOY SECTION CREDIT EXPERIENCE
REPORTING ACTIVITY

1. Any member of the Electrical Alloy Section who wishes to find out if one of its customers or prospective customers has an account or accounts of more than 60 days outstanding with any other member of the Section may ask for a canvass of these other members by sending in Form Telegram #1 to the NEMA Statistical Department.

2. The NEMA Statistical Department upon receipt of this telegraphic request will immediately canvass the other members of the Section, using Form Telegram #2.

3. The other members will then reply at the date and time specified. Any telegram sent in earlier than the time specified, or after reply has been made to the original inquirer by the Statistical Department, will not be considered. If no reply is received up to the time answer is made to the original inquirer, it will be considered as indicating that the member has no account outstanding of more than 60 days with the customer in question.

4. The Statistical Department upon receipt of the replies at the stated date and time will immediately telegraph the inquirer a tabulation of these replies, using form Telegram #4.

5. Any request for information or reply to an inquiry which is not made in the proper approved telegraphic form will not be considered by the Statistical Department.

November 30, 1937

IIII: AP

23-EA-1-Jan. 11, 1938

Exhibit A

FORM TELEGRAM #1

Statistical Dept.
National Electrical Manufacturers Assn.
155 E. 44th St.
New York, N. Y.

KINDLY INQUIRE AS TO WHETHER ANY MEMBER OF THE
ELECTRICAL ALLOY SECTION HAS AN ACCOUNT WITH THE
(Customer's Name) WHICH IS MORE THAN SIXTY
DAYS OUTSTANDING.

FORM TELEGRAM #2-----

To-----Co.

Findings

36 F. T. C.

WE HAVE BEEN ASKED BY A MEMBER OF THE ELECTRICAL ALLOY SECTION TO INQUIRE IF YOU HAVE AN ACCOUNT WITH (Customer's Name) WHICH IS MORE THAN SIXTY DAYS OUTSTANDING. IF YOU HAVE SUCH AN ACCOUNT ABOUT WHICH THERE IS NO DISPUTE AS TO THE DEBT OR THE AMOUNT DUE KINDLY WIRE AT (Time) ON (Date) THE AMOUNT INVOLVED AND NUMBER OF DAYS OUTSTANDING.

STATISTICAL DEPT.

NEMA

23-EA-2-

Jan. 11, 1938

Exhibit A

FORM TELEGRAM #3

STATISTICAL DEPT.

NATIONAL ELECTRICAL MANUFACTURERS ASSN.

155 E. 44th STREET

NEW YORK NY

RETEL --- (Date)----- WE HAVE AN ACCOUNT WITH
 --- (Customer's Name)----- ABOUT WHICH THERE IS NO
 DISPUTE AS TO THE DEBT OR AMOUNT DUE WHICH IS
 --- (Number)----- DAYS OUTSTANDING. THE AMOUNT
 OWING IS --- (Amount)-----

FORM TELEGRAM #4

-----CO.

RETEL --- (Date)----- (Three) COMPANIES HAVE ACCOUNTS
 OUTSTANDING WITH --- (Customer's Name)----- ABOUT WHICH
 THERE IS NO DISPUTE AS TO THE DEBT OR THE AMOUNT DUE. THESE
 ACCOUNTS ARE FROM --- (Number)----- TO --- (Number)-----
 DAYS OUTSTANDING AND TOTAL --- (Amount)----- DOLLARS
 IN AMOUNT.

STATISTICAL DEPARTMENT

NEMA

23-EA-3--

Jan. 11, 1938

Exhibit A

PAR. 24. From the facts found in paragraph 22 and from the other facts herein set forth, especially those found in paragraphs 16, 19, and 20, the Commission finds that the respondent manufacturers, acting through and by means of respondent section, did follow courses of action which they agreed upon in the meetings of respondent section before such actions were approved or disapproved by counsel of National Electrical Manufacturers Association.

PAR. 25. The rules of the National Electrical Manufacturers Association define the duties of an executive secretary. Such duties are

the arranging for meetings of the section and acting as recording secretary at such meetings, contacting members, and prospective members, keeping the section informed at section meetings and by bulletins of information of interest to the section, coordinating section activities with National Electrical Manufacturers Association activities and with activities of other associations and agencies, and generally, the handling of such other matters as may be assigned to him by the section.

Respondent George B. Cumming, as executive secretary of the said respondent section, has received from time to time instructions that he, as the executive secretary, must record in the minutes all actions and discussions at any section meeting, that he must remain in the meeting room until all members have left the meeting, and that he must attend all section meetings. At all times herein mentioned the said respondent George B. Cumming has complied with these instructions, except when on several occasions illness prevented his attendance. Respondent, George B. Cumming, likewise has acted as the executive secretary of special committees of respondent section.

PAR. 26. The said rules also provide, as rule 8 thereof, that:

No action taken by a Division, Section, Group, or Sub-Group, or directions given to an officer or Committee of a Division, Section, Group or Sub-Group, shall be followed unless its legality and conformity with the Constitution, By-Laws and these Organization and Working Rules shall have been approved by Counsel.

PAR. 27. At a meeting of the respondent section of May 2, 1934, a report of the standing committee relating particularly to the employment of an "Executive secretary" for the respondent section, was read, whereupon the section passed a resolution that the matter be allowed to remain in abeyance for the time being.

At a meeting of the respondent section on June 7, 1934, a member of the standing committee on the subject of the employment of the executive secretary for the section, explained the functions of such an official, and respondent, William J. Donald, presented to respondent section the advantages of an executive secretary and of the services available through the National Electrical Manufacturers Association for said section, including those of respondent, George B. Cumming, "to assist on supplemental code" under the basic N. R. A. Code for the Electrical Manufacturing Industry.

Respondent, George B. Cumming, visited the meeting of the respondent section on June 26, 1935, and, according to the minutes of this meeting, "reviewed his qualifications as a possible supervisor for the industry organization." Thereafter, at said meeting, said respondent George B. Cumming was duly elected by the respondent section

Findings

36 F. T. C.

as its executive secretary, and was instructed that his first duty was to call at the plants of all members "for the purpose of acquainting himself with the companies and personnel." At this meeting, in connection with the employment of respondent, George B. Cumming, as executive secretary of respondent section, it was also decided to create a fund to pay his traveling expenses as the executive secretary.

At the meeting of the respondent section on September 29, 1935, a resolution was passed that the National Electrical Manufacturers Association should bill the respondent section as a section for the services of respondent, George B. Cumming, "as executive secretary on the basis of the previous supplementary budget to be apportioned on the same basis that dues of this section are assessed." Also, at this meeting, respondent section considered a supplementary budget for the services of the respondent, George B. Cumming, as executive secretary of said respondent section, and among the items included in this budget were allowances for telephone and telegram expenses, four trips to Detroit a year and for miscellaneous traveling in the East.

From July 1, 1935, to December 1, 1941, the total compensation paid by the said respondent section to the said respondent, George B. Cumming, and his secretary for services rendered to the section as executive secretary was:

<i>Period</i>	<i>Amount</i>
July 1 to December 31:	
1935.....	\$1, 447. 20
1936.....	1, 641. 93
1937.....	1, 184. 97
1938.....	1, 736. 02
1939.....	1, 736. 00
1940.....	906. 33
1941.....	929. 00
Total	9, 581. 45

From July 1, 1935, to December 31, 1941, the total amount paid by the said section to the said respondent, George B. Cumming, for traveling expenses as executive secretary of the said section was:

<i>Period</i>	<i>Amount</i>
July 1 to December 31:	
1935.....	\$117. 59
1936.....	124. 73
1937.....	112. 45
1938.....	35. 86
1939.....	127. 92
1940.....	109. 20
1941.....	132. 83
Total.....	760. 58

From July 1, 1935, to December 31, 1941, the amount paid by the said section to the respondent, George B. Cumming, for telephone and telegraph charges incurred as executive secretary of the said section was:

<i>Period</i>	<i>Amount</i>
July 1 to December 31:	
1935.....	\$18. 64
1936.....	94. 19
1937.....	20. 25
1938.....	10. 05
1939.....	9. 30
1940.....	10. 25
1941.....	91. 82
Total.....	254. 50

PAR. 28. At the meeting of respondent section on May 22, 1937, the minutes of said meeting disclose that "it was the consensus of the meeting that in view of the absence" of respondent, George B. Cumming, as executive secretary of respondent section, "and a need for further study of the question of the section program by the members and the executive secretary, no action be taken at this time."

The minutes of said respondent section show that at the meetings of January 26, March 23, May 21 and 22, and July 20, 1937, and October 5, 1937, respectively, the question of a "section program" was considered. The minutes of said respondent section show that at the meeting of July 20, 1937, the executive secretary reported that he had received no suggestions from the members concerning a "section program."

The consideration of a "section program" resulted in the setting up of a definite program for the engineering committee of the section.

PAR. 29. At the meeting of respondent section on January 11, 1938, respondent, George B. Cumming, as executive secretary, reported that he had performed the normal functions of his office; had assisted the Committee on Credit Information in its contact with the National Electrical Manufacturers Association's Statistical Department and the National Electrical Manufacturers Association's counsel, and in its preparation of the proposed procedure, had attended the meeting of the General Engineering Committee held in Washington; had prepared the minutes for approval; and had taken care of their distribution.

PAR. 30. The minutes of respondent section, whenever referred to herein, were, unless otherwise indicated, submitted to, and approved by, counsel for the National Electrical Manufacturers Association.

Conclusion

36 F. T. C.

PAR. 31. The Commission finds that respondent, George B. Cumming, as executive secretary of respondent section, had no personal knowledge of the letters set forth in paragraphs 9, 10, 11, 12, 13, 14, and 20, inclusive, hereof, nor of the contents thereof, nor of the activities set forth therein, with the exception that, as shown by paragraph 19 hereof, he knew of a discussion at the August 30, 1938 meeting regarding the return of reels, and that none of said letters referred to was ever discussed at any section meeting at which he was present.

PAR. 32. Respondent, William J. Donald, is not the managing director of respondent section, as alleged in the complaint, and has no direct contact with the business and affairs of same, but is the managing director of National Electrical Manufacturers Association.

PAR. 33. The Commission finds that the tendency and effect of the combinations, agreements, and understandings hereinbefore mentioned, and the things done thereunder and in pursuance thereto and in furtherance thereof, and the further facts, acts and practices hereinbefore enumerated, have had, and do have, as stipulated by the respondents, the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among said respondent manufacturers in the sale of electrical alloy resistance wire in commerce as defined in the Federal Trade Commission Act; of unduly restricting and restraining trade and such commerce in said products; of eliminating competition; of creating in said respondent manufacturers a monopoly in the sale of said products in said commerce; of placing in respondent manufacturers the power to control and enhance prices; and of unreasonable restraining such commerce in said products.

CONCLUSION

The acts and practices of the respondent manufacturers and the respondent section, as hereinabove found, are all to the prejudice of the public, have a dangerous tendency to unduly hinder and prevent, and have actually hindered and prevented competition in the sale and distribution of unpatented electrical alloy resistance wire in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act; have a dangerous tendency to create in respondent manufacturers a monopoly in the sale and distribution of said product, in said commerce; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein, 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 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Electrical Alloy Section of National Electrical Manufacturers Association, an unincorporated trade association, and respondent corporations, Alloy Metal Wire Co., Inc., Hoskins Manufacturing Co., Wilbur B. Driver Co., C. O. Jelliff Manufacturing Corporation, and Driver-Harris Co., together with all of said respondents' officers, representatives, agents, and employees, directly or indirectly or through any corporate or other device, in connection with the offering for sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of unpatented electrical alloy resistance wire of any type or description, do forthwith cease and desist from continuing, entering into, carrying out, cooperating, aiding, or abetting in carrying out, any planned common course of action, agreement, understanding, or combination, express or implied, between and among any two or more of said respondents or between one or more of said respondents and any others not parties hereto, to do or perform any of the following acts or practices:

1. Fixing, establishing, or maintaining prices, terms, discounts, or conditions of sale for electrical alloy resistance wire, or adhering to or promising to adhere to the prices, terms, discounts, or conditions of sale so fixed.

2. Exchanging, distributing, or relaying between and among themselves or between and among themselves and others competing with any of the respondent corporations either directly among respondent manufacturers and their competitors or indirectly through respondent section or other common agency, information as to prices, terms, discounts, or conditions of sale of said electrical alloy resistance

Order

36 F. T. C.

wire, for the purpose or with the effect of restraining competition in the offering for sale or sale of such wire.

3. Fixing, establishing, or maintaining uniform resistance standards or other uniform standards for use in connection with the manufacture of said electrical alloy resistance wire, for the purpose or with the effect of fixing or attempting to fix identical prices at which said electrical alloy resistance wire is sold or offered for sale by respondent corporations.

4. Submitting uniform bids in connection with the sale or offering for sale of said electrical alloy resistance wire sold or offered for sale by respondent corporations.

It is further ordered, That the case growing out of the complaint be, and the same hereby is, closed as to respondents, William J. Donald, as managing director of the National Electrical Manufacturers Association, and George B. Cumming, as executive secretary of Electrical Alloy Section of National Electrical Manufacturers Association, but without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

It is further ordered, That all and each of the respondents, except those against whom the complaint herein has been dismissed by this order, 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 order be served upon the respondent Electrical Alloy Section of National Electrical Manufacturers Association by service, in accordance with the rules of the Commission, upon William J. Donald, managing director of National Electrical Manufacturers Association, 155 East Forty-fourth Street, New York, N. Y.

Syllabus

IN THE MATTER OF

EUGENE M. WOOLARD, TRADING AS MASTER ARTISTS'
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 4514. Complaint, June 3, 1941—Decision, Mar. 23, 1943*

Where an individual, engaged in the competitive interstate sale and distribution of tinted or colored enlargements of photographs or snapshots, and frames therefor; and 12 sales agents who canvassed homes in cities, towns, and rural communities, carrying with them sample cases and taking orders on contract forms bearing his trade name—

- (a) Represented, through said sales agents, that said colored enlargements, described as "Portraits of Distinction" in contract forms referred to, were "portrait paintings" or "hand painted";

When in fact they were not paintings, either water color or oil, but were enlargements from photographic bases, tinted or colored with pastel or crayon, water color, or other powdered pigments sprayed thereon mainly through the use of an air brush;

- (b) Made use of the so-called "draw," under which scheme salesmen assured prospective customer that person drawing the "lucky" certificate was entitled to take advantage of the "special introductory offer" as thereon set forth, entitling him to a \$30 portrait or hand-painted portrait at the reduced price of \$7.50, or two for \$10;

The facts being that \$7.50 was the customary price at which said product was sold; the \$10 offer for two was employed by him to increase the volume of his business; no advantage was obtained by the customer through said "draw" since anyone apparently acceptable was permitted to secure a "lucky" certificate and purchase said "paintings" or "portraits" at the usual price; and the alleged "draw" was a deceptive scheme with intent and effect of inducing prospects to believe that if they drew the "lucky" certificate they would, as one of a favored few, have the advantage of obtaining pictures at prices greatly below those which other customers were required to pay therefor;

- (c) Made use of trade name "Master Artists' Association" upon his forms and in referring to his aforesaid business;

Notwithstanding fact his business did not partake of the nature of such an association and he did not operate, or possess equipment or personnel essential to the operation of, an art studio or place where tinted and colored enlargements of photographs were made, but products in question were made for him by other companies at stipulated prices; and

- (d) Made use of a sales plan under which salesmen concealed from or failed to advise prospective customer that the finished picture—which according to the contract form must be delivered framed but without obligation to accept the frame—would be hexagonal in shape with convex surface so that it could only be fitted into a specially designed frame not ordinarily obtainable; and under which salesmen delivering the enlargement framed

Complaint

36 F. T. C.

as aforesaid did not make it a practice—in the event of customer's failure or refusal to buy the frame—to inform him where one might be obtained from any other source; with result of compelling purchaser to purchase a frame from said individual and pay the price demanded therefor;

With capacity and tendency to mislead and deceive the purchasing public concerning the origin, kind, quality, and value of products sold, thereby causing it to purchase said products, and to pay higher prices for them than they would have done otherwise:

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

Mr. Marshall Morgan for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by the authority vested in it by said act, the Federal Trade Commission having reason to believe that Eugene M. Woolard, an individual, trading as Master Artists' Association, Inc., and Walter O. Wyatt, Walter E. Sneed, Bessie Swanson, L. E. Harrison, William Nadeau, E. R. Malone, G. D. Hill, Caesar Morales, Carl Rhine, D. Edwards, R. McIsaac, and Eva Metcalf, individuals, 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, Eugene M. Woolard, is an individual, trading as Master Artists' Association, Inc., with his principal office and place of business located at 5716 State Street, in the city of East St. Louis, State of Illinois. The residence or business addresses of the remaining individual respondents so far as known to the Commission are as follows: Walter O. Wyatt, Danville, Ill.; Walter E. Sneed, Dahlgren, Ill.; Bessie Swanson, Alexandria, La.; L. E. Harrison, McLeansboro, Ill.; William Nadeau, Dexter, Maine; E. R. Malone, McLeansboro, Ill.; G. D. Hill, Gilmer, Tex.; Caesar Morales, San Antonio, Tex.; Carl Rhine, 5716 State Street, East St. Louis, Ill.; D. Edwards, 5716 State Street, East St. Louis, Ill.; R. McIsaac, Arnold, Nebr.; and Eva Metcalf, 5716 State Street, East St. Louis, Ill.; these respondents are associated with Eugene M. Woolard, trading as Master Artists' Association, Inc., in the operation of said business, and also have as their business addresses 5716 State Street, East St. Louis, Ill., where mail for them, when received, is forwarded by said Eugene M. Woolard.

All of said respondents are engaged in the sale and distribution of tinted or colored enlargements of photographs or snapshots and frames therefor. Respondents sell and distribute such products to customers located in various States of the United States and cause said products when sold to be transported from the State of Illinois or other point of origin to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of 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 of photographs and of frames therefor and likewise with corporations, partnerships, and individuals engaged in the sale of genuine original paintings and water color paintings in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondents, during the period of time for more than 3 years last past, under the control and direction of respondent, Eugene M. Woolard, have entered into and carried out various understandings, agreements, combinations, and conspiracies for the purpose of selling tinted or colored enlargements of photographs or snapshots and the frames therefor to the purchasing public by the use of false, misleading, and deceptive representations concerning said products and the nature and character of the business operated by the respondent Woolard under the name Master Artists' Association, Inc.

PAR. 4. Pursuant to the said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondents, acting in concert and cooperation with each other, have engaged in the following practices, and done and performed, and now do and perform, the following acts and things:

1. In the course and conduct of said business, respondent, Eugene M. Woolard, causes the other respondents named herein to visit the homes of various prospective customers in the cities, towns, and rural communities of the various States of the United States offering photographic enlargements and frames therefor for sale. Purchasers of such products are led to believe that they are contracting or dealing with a duly constituted advertising agent or representative of an association of artists organized under the name, and known as, Master Artists' Association, Inc. Each such respondent is furnished by said respondent, Woolard, with an identification card or card of credentials which is exhibited by him when interviewing various prospective purchasers. Equipment, including sample cases containing sam-

Complaint

36 F. T. C.

ples of paintings, is also furnished by said respondent, Woolard, to such respondents for use in the solicitation of orders. Respondent, Eugene M. Woolard, causes orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of Master Artists' Association, Inc., across the top thereof, and in such order it is variously stated that the customer is entitled to a "Portrait of Distinction" or "Portrait Painting." The said order blank or contract is duly signed by one of the respondents herein as "Advertising Representative" on a line provided therefor. Receipts similar in tenor and effect are signed "Master Artists' Association, Inc." and mailed to the purchaser when said purchaser's order is received by respondent, Woolard. The typical form of contract used by the respondents under the trade name Master Artists' Association, Inc., is as follows:

PORTRAITS OF DISTINCTION

MASTER ARTISTS' ASSOCIATION

Incorporated
5716 State St.,
East St. Louis, Ill.

P. O. _____

Date _____

Please make for me _____ Portrait Painting _____ from the Photograph _____ I have furnished your representative this day, and deliver the same on or about the _____ day of _____ 19____. The portrait _____ are to cost me \$_____ Amount paid your representative \$_____ Leaving a balance of \$_____, which I agree to pay on time of delivery.

THIS ORDER IS NOT SUBJECT TO CANCELLATION. VERBAL AGREEMENTS ARE NOT
RECOGNIZED.

The above price does not include Frames or Glass

This order is given you with the understanding that you are to deliver the above Portraits in suitable frames, which I am entitled to accept upon the payment of the prices stamped on the back of each frame, if the frames are satisfactory. If I do not accept and pay for the frames I agree to return them forthwith to the one who brings them.

Received by _____
Advertising Representative Customer

2. Such respondents, when calling upon prospective purchasers, exhibit several samples of attractively colored and finished specimens of the purported type of work to be performed. The prospective purchaser is told that similar portraits or paintings may be bought at a "Special Advertising Price" or at a "Reduced Price" or for a "Special Producing Price," or for the "Cost of Production."

3. Said respondents particularly call the prospective purchaser's attention to the beauty of the work, the finish, and to the natural color of the hair, eyes, complexion, and clothing. Invariably, the pictures are represented and referred to by said respondents as "paintings," "hand painted portraits," "polychrome portraits," or some term of similar import, and are represented as being worth \$30 or some similar amount.

4. Such respondents then inform the prospective purchaser that the completed "painting" furnished by the respondent will be similar to the sample exhibited; that the producer, Master Artists' Association, Inc., is an art association or association of artists skilled in making portraits, paintings, and similar works of art. The prospective purchaser is then induced to sign an order or contract purporting to entitle the customer to receive a portrait or painting upon payment of the cost of production only.

5. Such respondents then induce the customer to loan 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 will be returned to the customer with the completed picture.

6. The delivery of the finished picture is made at a subsequent date by a respondent other than the respondent soliciting or securing the order or by some other agent of the respondent Woolard, who presents the picture fully framed in a peculiar, octagonal, convex shape, and by means of coercion, threats, abuses, and misrepresentations of various kinds endeavors to sell the frame to the customer at varying prices.

7. In the event the purchaser objects to the quality, design, or price of the frame, although previously advised that there is no obligation to buy a frame, the purchaser is, for the first time, informed that Master Artists' Association, Inc., is the only company that furnishes frames of this particular design. As a result of such representations and conduct, the respondents generally succeed in selling the frame at an exorbitant price, usually in the neighborhood of \$15 or more.

8. In the event the purchaser refuses to buy a frame, the respondent in many instances refuses to deliver the completed picture, regardless of whether or not it has previously been paid for in full, or to return

Complaint

36 F. T. C.

the original photograph borrowed from the customer, until a frame is ordered or a claimed balance is paid in full. This is the first time that the purchaser is informed definitely that the photograph which has been furnished to the respondents will not be returned unless the claimed balance is paid in full.

9. Said respondents in some instances further represent that a drawing contest will be held for the purpose of deciding who shall be one of the few "lucky" persons in a given community to have respondents place free paintings in their homes in connection with a "special advertising offer." The respondents, in connection with said drawing, 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 trade checks, certificates, or coupons, and entitle the holder thereof to two genuine \$30 hand-painted portraits for the sum of \$10 or one such painting for \$7.50. The said envelopes containing said slips are so manipulated by the respondent making the sale that the prospective purchaser invariably draws a so-called "lucky" coupon or certificate. The following is typical of the coupons or certificates used:

MASTER ARTISTS' ASSOCIATION

CHICAGO

For the purpose of advertising THE MASTER PORTRAIT, exclusive design, 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-----

MASTER ARTISTS' ASSOCIATION.

The customer is thereupon assured by the respondent that he has been very fortunate in drawing a certificate entitling him to take advantage of respondents' "special introductory offer" and the holder is thereby induced to execute a contract for one or more of such "portraits" through this "special advertising offer at greatly reduced prices."

PAR. 5. 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 pig-

ments 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 pigments 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. 6. In truth and in fact, the various statements and representations made and used by the respondents, and the acts and practices employed by them in concert and cooperation with each other, in the sale and offering for sale of said products in the cities, towns, and communities of the various States of the United States, were and are false, deceptive, and misleading in the following, among other, particulars:

(a) Master Artists' Association, Inc., is not and never has been an art association in the sense that such term is known and accepted in the world of art. On the contrary, the business conducted by respondents through the medium of the above styled trade name is and has been no more, in fact, than a business enterprise to sell to the purchasing public for profit, cheap colored or tinted photographic enlargements and frames therefor. The use by respondents of the term, art association, has misled and deceived the purchasing public as to the character of the business actually conducted by the respondents and has caused the public to confuse respondents' business with various organizations similar in name or designation which are conducted or which may be properly designated as art associations.

(b) The so-called "paintings," "hand painted portraits," or "polychrome portraits," as sold by respondents, are not portraits or paintings in any sense of the word, but to the contrary, are merely cheap, quickly made photographic enlargements, 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 sprayed upon the photographic enlargement in solution largely through the use of a mechanical air brush and compressed air. In truth and in fact, said so-called "portraits" or "paintings" are not sold at a "special advertising price" or at a "reduced price" or for a "special producing price" or for the "cost of production," but, to the contrary, the price at which respondents sell the unframed photographic tinted enlargements is in excess of and above the regular and customary price for

Complaint

36 F. T. C.

which said enlargements usually and customarily sell in the ordinary course of business.

(c) The so-called pictures or "hand painted portraits" 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 so-called pictures or hand-painted portraits.

(d) Purchasers do not understand and there is no agreement in connection with said contracts that photographs submitted by them are to be retained by respondents until payment of any sum alleged by respondents to be due them. In truth, purchasers are given the impression that their photographs which have been loaned to the respondents will be returned at the time the finished product is delivered, regardless of whether or not such product is purchased.

(e) Respondents are not an association of artists and do not employ any artists, nor have they commercialized the talents of any of America's foremost portrait artists. The enlargement and coloring of photographs is done by another company for fixed prices. Master Artists' Association, Inc., is not an association of artists or an association of any kind, but is a trade name used by the respondents in the sale and distribution of said pictures and frames.

(f) Respondents conceal and have concealed from purchasers at the time the "portrait" is ordered the fact that the finished product will be delivered in a peculiar convex form, shape, and size; and that it will be impossible for the customer thereafter to obtain a frame to fit said "portrait" except from respondents at prices fixed by respondents.

(g) Respondents' selling methods are directed primarily to accomplish the sale of a picture frame at an exorbitant price, and the respondents' activities and representations in securing contracts for alleged "portraits" are used to enable respondents to contact the purchaser for an opportunity of selling frames of cheap and inferior quality at prices which are in excess of and far above the price at which said frames should usually and customarily sell for in the ordinary course of business.

(h) Respondents' sales of frames are accomplished by coercive and oppressive acts, practices, and representations, among which are retention of the original photograph submitted by the customer or the completed "portrait" or "portraits," or both, until a frame is purchased by the customer.

(i) The so-called "red seal certificates" or "lucky slips" drawn by customers from respondents upon the representation that the customer is thus obtaining a ticket or certificate entitling him to obtain

an expensive hand painting at a great saving, falsely and deceptively induces the customer to believe that he has thereby obtained a distinct advantage in price and influences him to enter into a contract for a "painting" when, as a matter of fact, such certificate gives no advantage in price and all prospective purchasers are permitted to make the same or similar lucky draw and obtain such red seal certificates.

PAR. 7. Each of said respondents herein has acted, and does act, 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. 8. The use by the respondents of the aforesaid false and misleading representations, acts, and practices in the sale and offering for sale of purported portraits and paintings 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 sold as herein described and has thereby induced and is inducing the purchasing public to purchase said products under the erroneous and mistaken belief that the same were and are high-grade quality portraits or paintings and picture frames of exceptional value. The use by respondents of the aforesaid acts and practices has a tendency and capacity to and does unfairly divert trade to respondents from their competitors likewise engaged in the sale and distribution of tinted or colored enlargements or photographs in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have been and now are effectively used by the respondents in making sales of respondents' products to the purchasing public.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged, including said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, are all to the prejudice and injury of the public and 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.

Findings

36 F. T. C.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 3, 1941, issued its complaint in this proceeding and caused said complaint to be served as required by law upon respondents, Eugene M. Woolard, an individual, trading as Master Artists' Association, Inc., and Walter O. Wyatt, Walter E. Sneed, Bessie Swanson, L. E. Harrison, William Nadeau, E. R. Malone, G. D. Hill, Caesar Morales, Carl Rhine, D. Edwards, R. McIsaac, and Eva Metcalf, individuals, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On June 23, 1941, the above-named respondents, by counsel, filed their answer in this proceeding. Thereafter, respondent Eugene M. Woolard being desirous of expediting said proceeding and avoiding the expense incident to the taking of testimony, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, Eugene M. Woolard, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding as to said respondent, Eugene M. Woolard, without the presentation of argument or the filing of briefs. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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 M. Woolard (sometimes hereinafter referred to as "respondent"), is an individual, who for more than 3 years prior to July 1, 1941, traded as Master Artists' Association, Inc., with his principal office and place of business located at 5716 State Street, East St. Louis, Ill. Between the dates of July 1936, and May 26, 1938, respondent operated through the medium of

an Illinois corporation known as Master Artists' Association, from offices then located at 252 Arcade Building, East St. Louis, Ill. Said corporation was dissolved on or about May 26, 1938. Since that time, until July 1, 1941, said respondent operated under the trade name Master Artists' Association, Inc. During the time stated, respondent was engaged in the business of selling and distributing in commerce tinted or colored enlargements of photographs or snapshots and frames therefor from the above-named addresses. Respondent sold and distributed such products to customers located in various States of the United States other than the State of Illinois and caused said products, when sold by him, to be transported from the State of Illinois or other points of origin to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, respondent was 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 of photographs or snapshots and of frames therefor.

PAR. 3. In the course and conduct of the aforesaid business, individual respondents, Walter O. Wyatt, Walter E. Sneed, Bessie Swanson, L. E. Harrison, William Nadeau, E. R. Malone, G. D. Hill, Caesar Morales, Carl Rhine, D. Edwards, R. McIsaac, and Eva Metcalf, acting as sales agents or sales representatives of respondent, Eugene M. Woolard, operating as Master Artists' Association, Inc., visited the homes of various prospective customers in the cities, towns, and rural communities of the United States and there offered for sale respondent, Woolard's, colored enlargements of photographs and snapshots and frames therefor. Said individual respondents, in offering said products for sale, represented themselves as sales agents or sales representatives of Master Artists' Association, and were so accepted and dealt with by customers purchasing respondent Woolard's said colored photographic enlargements and frames therefor. Each said sales agent carried with him for use in the solicitation of orders a sample case obtained from respondent Woolard which contained attractive samples of colored enlargements sold and distributed by and on behalf of said respondent Woolard.

Orders for colored photographic enlargements were taken on forms employed by respondent, Woolard's, salesmen. A typical form of con-

Findings

26 F. T. C.

tract used by respondent, Woolard, operating under the trade name of Master Artists' Association, is as follows:

PORTRAITS OF DISTINCTION

MASTER ARTISTS' ASSOCIATION P. O.-----
 Incorporated Date-----
 5716 State St.
 East St. Louis, Ill.

Please make for me ----- Portrait Painting----- from the Photo-
 graph----- I have furnished your representative this day, and deliver
 the same on or about the ----- day of ----- 19----- The por-
 trait----- are to cost \$----- Amount paid your representa-
 tive \$----- Leaving a balance of \$-----, which I
 agree to pay on time of delivery.

THIS ORDER IS NOT SUBJECT TO CANCELLATION.

VERBAL AGREEMENTS ARE NOT RECOGNIZED.

The above price does not include Frames or Glass

This order is given you with the understanding that you are to deliver the above Portraits in suitable frames, which I am entitled to accept upon the payment of the prices stamped on the back of each frame, if the frames are satisfactory. If I do not accept and pay for the frames I agree to return them forthwith to the one who brings them.

Received by-----
 Advertising Representative Customer

Sales agents or sales representatives, in offering for sale and selling respondent's colored enlargements, described them usually as "Portrait Paintings" or "Hand Painted."

The Commission finds that a painting is a likeness, image or scene depicted with paints without the aid of photography. 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 material without the aid of photography.

The Commission further finds that the colored enlargements described and designated by respondent's said sales agents or sales representatives as "Portrait Paintings" or "Hand Painted" were not in fact paintings or hand-painted products but, on the contrary, were enlargements made from photographic bases tinted or colored by the use of pastel or crayon, water color, or other powdered pigments

sprayed upon said enlargements, mainly through the use of a mechanical device known as an air brush operated by compressed air.

PAR. 4. Sales representatives of respondent from time to time effected the sale of respondent's said colored enlargements through the use of the so-called "draw." In connection with the use of the "draw," salesmen were equipped with a number of small envelopes, some of which contained blank pieces of paper and others of which contained so-called "lucky" blue certificates with a red seal in the center. Said certificate stated on its face that the holder of the certificate, for the purpose of advertising respondent's products, was entitled to receive and to take advantage of respondent's "Special Introductory Offer." In connection with the use of the "draw," the prospective customer was from time to time assured by the sales representative of respondent Woolard that the person drawing a "lucky" certificate would be entitled to receive a \$30 portrait or a hand-painted portrait at the reduced price of \$7.50, or two paintings for \$10, such prices being represented as a "Special Introductory Offer" or a "Special Advertising Offer." Prospective customers were in this way led by salesmen to believe that one drawing a "lucky" certificate would obtain a distinct financial advantage and would be enabled to obtain a painting at a great saving in price.

The Commission finds that said price of \$30 was not in fact the actual or customary price at which respondent's said colored enlargements had been sold, and that the price of \$7.50 per picture was not a reduced price nor a "Special Introductory" nor a "Special Advertising" price or offer, but was in fact the customary price at which said product was normally sold by respondent in the usual course of business, and that the price of two colored enlargements for \$10 was employed by respondent for the purpose of increasing the general volume of his picture business.

The Commission finds that said alleged "draw" was a deceptive scheme conceived for the purpose and with the result of inducing prospective purchasers to believe that if they "drew" "lucky" certificates they would have the advantage of obtaining pictures at prices greatly below prices other customers must and did pay for them. By means of this "drawing" scheme or sales plan, members of the purchasing public would be beguiled into believing that they were the exceptional few whom fortune had favored. The use by respondent of the statements and representations of his said sales agents and sales representatives, in connection with the said "draw," had the capacity and tendency to lead the holders of said blue certificates or so-called "lucky" certificates to believe that said certificates placed

Findings

38 F. T. C.

the holder thereof at a direct financial advantage in purchasing a "painting" or "portrait," and to induce such holders to enter into contracts for the purchase of so-called "paintings" or "portraits." In truth and in fact, said certificate gave the holder thereof no advantage whatsoever in price or otherwise, for any apparently acceptable customer was permitted to secure a "lucky" certificate and to purchase said "paintings" or "portraits," but was charged the usual and customary price therefor.

PAR. 5. The Commission finds that respondent's business as conducted by him at East St. Louis, Ill., did not consist or partake of the nature of any "association of artists." Nor did respondent operate at East St. Louis, Ill., or elsewhere, or possess the equipment or personnel essential to the operation of, any art studio or institute of art, nor any place of business where tinted or colored enlargements of photographs or snapshots were made. In fact, respondent's said colored enlargements were made for him by another company or other companies at prices stipulated for such service.

The Commission finds that the use of such term or trade name, "Master Artists' Association," by respondent and his sales representatives or sales agents and the sales representations made in connection therewith, as herein described, had the capacity and tendency to lead purchasers and prospective purchasers to believe that they were contracting or dealing with duly constituted sales representatives or sales agents of an actually existing art studio, association, or institute, and to cause purchasers and prospective purchasers to confuse the business of respondent with that of various art associations or with organizations similar in name and designation which were actually conducting operations essential to the production of tinted or colored enlargements of photographs and snapshots.

PAR. 6. The said colored enlargements of photographs and snapshots sold by respondent were hexagonal in shape, 10 by 15 inches in size, with raised or convex surface. Frames subsequently sold by respondent when pictures were delivered were of the same shape and contour, and equipped also with raised or convex glass. Respondent's sales representatives made it a practice to sell the picture first without mentioning the matter of a frame at that time. While respondent's salesmen from time to time informed prospective customers that they did not have to buy a frame if they did not desire to do so, and while frames sold by respondent might have been obtainable from persons, firms, or corporations engaged in business of the same character as that of respondent Woolard, such frames are not and were not ordinarily obtainable in photographic supply stores or furniture stores accessible to the consuming public. Pictures sold by respondent

Woolard were customarily delivered to the customer framed in the type or types of frames sold by respondent, i. e., hexagonal in shape and equipped with a raised or convex glass. In the event of the failure or refusal of a customer to buy a frame, respondent's salesmen did not make it a practice to inform the customer where a frame might be obtained from any source other than from respondent.

The Commission finds that the sales plan employed by respondent and his sales agents and sales representatives, to wit, by the sale of a picture by the salesman first contacting the customer and the subsequent sale or attempted sale of a frame by a second salesman calling later, and the making of the picture in a form difficult to fit with a frame, was operated primarily and actually for the purpose of forcing, and had the capacity and tendency to force, customers to buy a frame; that as a result, the purchaser of a picture was compelled to deal with respondent in connection with the purchase of a frame, and to pay the price therefor demanded by respondent.

PAR. 7. The Commission finds that the aforesaid statements, representations, acts, practices, and methods used by respondent and his said agents or sales representatives in connection with the conduct of respondent's business, as aforesaid, are not all-inclusive but are illustrative of the character and type of statements, representations, acts, practices, and methods used by respondent and his said sales agents or sales representatives to induce the purchase of the products sold by them.

PAR. 8. The Commission finds that the use by respondent, Eugene M. Woolard, and his said agents or sales representatives of the hereinabove enumerated acts, practices, and methods in connection with the offering for sale and sale of said products in commerce, as aforesaid, has had the capacity and tendency to mislead and deceive the purchasing public concerning the origin, kind, quality, and value of the products sold, and to cause the public to purchase substantial quantities of respondent, Woolard's said products, and to pay higher prices for such products than they would have done otherwise.

CONCLUSION

The aforesaid acts and practices of respondent, Eugene M. Woolard, and his said sales agents or sales representatives, as herein described, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between the respondent, Eugene M. Woolard, an individual, trading as Master Artists' Association, Inc., 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 respondent, Eugene M. Woolard, findings as to the facts and conclusion based thereon, and an order disposing of the proceeding as to said respondent; and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Eugene M. Woolard, individually, and trading as Master Artists' Association, Inc., 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 photographic enlargements or any pictures made from a photographic base, and of frames therefor, do forthwith cease and desist from:

1. Using the terms "painting," "hand-painted," "oil painting," or "painted portrait," or any other term of similar import, to designate, describe, or refer to respondent's products; or otherwise representing, directly or by implication, that respondent's products are paintings.

2. Representing that the prices at which respondent offers for sale or sells his products constitute a discount to the purchaser, or that such prices are special or reduced or introductory prices, when such prices are in fact the usual and customary prices at which respondent sells his products in the normal and usual course of business.

3. Representing as the customary or regular prices or values of respondent's products, prices and values which are in excess of the prices at which such products are regularly and customarily sold by respondent in the normal and usual course of business.

4. Using the term "Artists' Association," or any other term of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent's business is conducted by an association of artists.

5. Representing, directly or by implication, that respondent owns, operates, or controls an organization or establishment possessing the equipment and employing the personnel essential to the production of tinted or colored photographs or enlargements.

6. The use of the so-called "draw" or the use of so-called "lucky" certificates or coupons, or the use of any other device, plan, or scheme whereby the representation is made, directly or by implication, that a prospective purchaser may obtain a picture or photograph free or for an amount less than that paid by purchasers generally.

7. Concealing from or failing to disclose to prospective purchasers that the finished picture or photograph, when delivered, will be so shaped and designed that it can only be fitted into a specially designed frame not ordinarily obtainable in photographic supply, furniture, or other stores accessible to the consuming public.

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

It is further ordered, That this proceeding be, and it hereby is, closed as to respondents, Walter O. Wyatt, Walter E. Sneed, Bessie Swanson, L. E. Harrison, William Nadeau, E. R. Malone, G. D. Hill, Caesar Morales, Carl Rhine, D. Edwards, R. McIsaac, and Eva Metcalf, 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.

IN THE MATTER OF
LINEN SUPPLY BOARD OF TRADE OF NEW JERSEY 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 4588. Complaint, Sept. 10, 1941—Decision, Mar. 23, 1943

Where an Association or Board, organized—as was its predecessor “Mutual Club”—to aid in carrying out the agreements, understandings, etc., below set forth by numerous members engaged in the supplying, leasing, and renting of linen supplies such as coats, trousers, aprons, frocks, and tablecloths to concerns in New York City and Newark, N. J., and the metropolitan area; 8 officers and directors thereof; and some 30 member concerns doing about 90 percent of such business in the Newark area and a substantial proportion of that in the whole metropolitan area, in competition with one another except insofar as said competition had been hindered by practices below set forth, and similarly in competition with others—

Entered into, carried out, and maintained agreements, understandings, combinations, and conspiracies among themselves to suppress and lessen competition in the business concerned in aforesaid States and metropolitan area; and

Where said various members, with the active cooperation, as the case might be, of said Board and “Club,” and individuals aforesaid; in pursuance and in furtherance of aforesaid agreements, understandings, etc.—

- (a) Organized their so-called “Mutual Club” or association to assist them in carrying out the various agreements, understandings, etc., involved, and its successor Board to control and regulate the business of supplying linen supplies in area in question;
- (b) Adopted, fixed, and maintained schedules of uniform minimum prices and discounts, and other terms and conditions for the use of their said supplies;
- (c) Reported to said Club and Board names of all customers; refrained from soliciting linen supply business from customers of other members without the consent of said Club or Board; and adopted and maintained exclusive dealing contracts with their customers whereby members required customers to deal exclusively with the respective members concerned at all times;
- (d) Admitted independent linen supply houses to membership of said Club or Board only upon condition that they indemnify members for business they took from them prior to becoming members, and required members who bought out independents similarly to indemnify other members for business taken from them by said independents;
- (e) Set up and maintained an arbitration board or committee as a disciplinary and punitive agency with authority to impose fines and suspend members who failed or refused to comply with the rules and regulations;
- (f) Operated “bogus” independent linen supply houses or “whips” to take away business from the independent houses and to discipline members who violated rules and regulations, and through said Club or Board checked and policed

members' prices by various means, including the practice of renting vacant places with the pretense of opening them as barber or beauty shops to secure members' quotations; and

- (g) Coerced, or attempted to coerce, manufacturers of such supplies into refusing to sell or extend credit to nonmember linen supply houses;

Capacity, tendency, and effect of which agreements and policies, and the practices and acts done in pursuance thereof were—

1. To unreasonably lessen, suppress, and restrain competition in the leasing and licensing of said linen supplies in the said metropolitan area, and to deprive the using public of the advantages of prices, terms, and conditions which they would receive under conditions of normal, unobstructed, free, and fair competition, and to otherwise operate as a restraint upon fair and legitimate competition;

2. To suppress, discriminate against, and eliminate from business, all competitors;

3. To hamper and interfere with the normal and natural flow of trade and commerce in said linen supplies from, into, and through the said metropolitan area; and

4. To tend to monopolize in said members the business concerned in the said metropolitan area:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public; hindered and prevented competition between and among said members in the leasing or renting of their said supplies in commerce; placed in members power to control and enhance prices and other terms and conditions in connection therewith; had a dangerous tendency to create in members a monopoly; unreasonably restrained commerce; and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Mr. George W. Williams for the Commission.

Kristeller & Zucker, of Newark, N. J., for Linen Supply Board of Trade of New Jersey, and various officers, directors, and members of said association.

Coudert Brothers, of New York City, for Albert P. Gresser, Lackawanna Linen Supply & Laundry Co. and Henderson Coat & Apron Supply Co.

Mr. Frederick W. Marquand, of New York City, for Banner Coat, Apron & Towel Supply Co.

Mr. Harry Gittleson, of Brooklyn, N. Y., for Belmont Coat, Apron & Towel Supply Co. and Commercial Coat & Apron Supply Co.

Meltzer & Nack, of New York City, for Central Linen Service, Inc.

Spalletta & Bernstein, of New York City, for Morgan Linen Service, Inc.

Complaint

36 F. T. C.

COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter particularly described, designated, 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, Linen Supply Board of Trade of New Jersey, is an incorporated association, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business at 1108 Broad Street, Newark, N. J., and hereinafter referred to as respondent "Board."

The following-named individuals are officers of said respondent, Board, and as such officers, and individually, are designated as respondents herein, Joseph Victor, president; Herman Maslow, vice president, Herbert N. Farrington, treasurer; Jack Orlinsky, secretary.

The following-named individuals, together with said officers, are members of the Board of Directors of respondent Board, and as such directors and individually, are designated as respondents herein, Albert P. Gresser, Bernard Richman, Max Sack, John M. O'Donaghue.

The membership of respondent Board is made up of numerous corporations, partnerships, firms, and individuals engaged in the supplying, leasing, and renting of linen supplies, such as coats, trousers, aprons, frocks, towels, tablecloths, and other like articles of merchandise.

Respondent Board is the successor of Mutual Club, a voluntary unincorporated association, commonly referred to as a trade association, organized, owned, controlled, and operated by members of said linen supply business, acting through the officers and directors thereof, for more than 5 years last past, the same having been organized to aid and assist them in carrying out the agreements, understandings, combinations, and conspiracies hereinafter referred to and set forth. Said respondent Board was organized in about 1937 for the purpose of tak-

¹ Motion to substitute a certain party respondent was granted by order of the Commission on December 11, 1942, as follows:

This matter coming on to be heard by the Commission upon the motion of respondent, Central Coat, Apron & Linen Supply Co., and Central Linen Service, Inc., a New Jersey corporation with its office and principal place of business at 275 Westside Avenue, Jersey City, N. J., by Manford Meltzer, Esq., attorney for said respondents, that the said Central Linen Service, Inc., be substituted as a respondent in this matter in the place and stead of respondent, Central Coat, Apron & Linen Supply Co., and the Commission having duly considered said motion and the record herein, and being now fully advised in the premises.

It is ordered, That the said Central Linen Service, Inc., be, and the same hereby is, substituted as a party respondent in the place and stead of respondent, Central Coat, Apron & Linen Supply Co., and that the necessary changes be made by interlineation.

ing over the property, effects, functions, and activities engaged in and conducted by said Mutual Club, but said Board did not actually take over the affairs and the property of Mutual Club and engage in the acts and practices engaged in and conducted by said Mutual Club until about April 1941, at which time it took over all of the property, assets, effects, records, and affairs of said Mutual Club and has since engaged in and conducted the business for which it was organized by said members, and theretofore engaged in and conducted by said Mutual Club, as aforesaid, as their representative, and in the place and stead of the said Mutual Club, and in the manner hereinafter set forth.

PAR. 2. Among the members of said Mutual Club and its successor, said respondent Board, are the following:

Reliable Linen Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 23 Branford Street, Newark, N. J.;

American Coat and Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business at 148 Huntington Terrace, Newark, N. J.;

Economy Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 92-94 Oakland Avenue, Jersey City, N. J.;

Economy Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 40 Lane Street, Paterson, N. J.;

Falcon Ideal Coat & Apron Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 14 West Kinney Place, Newark, N. J.;

J & R Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 536 Thirty-fourth Street, Union City, N. J.;

Lackawanna Linen Supply & Laundry Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 35 High Street, Newark, N. J.;

New Jersey Toilet & Towel Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 12 Clifton Street, Newark, N. J.;

Complaint

36 F. T. C.

Noxall Linen Supply & Laundry Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 95 Temple Avenue, Newark, N. J.;

Admiration Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 436 East Nineteenth Street, New York City;

Advance Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 436 East Nineteenth Street, New York City;

Banner Coat, Apron & Towel Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 155 Waverly Place, New York City;

Belmont Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 605 West Forty-second Street, New York City;

Brew Coat & Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 543 West Twenty-third Street, New York City;

Central Linen Service, Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 275 Westside Avenue, Jersey City, N. J.;

Commercial Coat & Apron Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 605 West Forty-second Street, New York, N. Y.;

Commercial Towel Supply, Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 123 Pitt Street, New York, N. Y.;

Eagle Barber Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 772 Myrtle Avenue, Brooklyn N. Y.;

Ellery Coat & Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 617-25 East Eighteenth Street, New York City;

Globe Coat & Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 520 West Forty-eighth Street, New York City;

Gotham Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 543 West Twenty-third Street, New York City;

Grammercy Linen Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 543 West Twenty-third Street, New York City;

Modern Silver Linen Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 540 West Twenty-fourth Street, New York City;

Morgan Linen Service, Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 484 Eleventh Avenue, New York City;

Pilgrim Coat, Apron & Linen Service, Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 555 West Forty-second Street, New York City;

Prudential Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing and doing business under and by verture of the laws of the State of New York, with its principal office and place of business at 454 West One Hundred Twenty-eight Street, New York, N. Y.;

Cosmopolitan Linen Supply Laundry Co., Inc., a corporation, organized, existing, and doing business under and by verture of the laws of the State of New York, with its principal office and place of business at 533 West Forty-second Street, New York, N. Y.;

Westchester Coat & Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 64-66 Warburton Avenue, Yonkers, N. Y.;

Henderson Coat & Apron Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 335 East Thirty-second Street, New York, N. Y.;

Long Island Coat & Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of

Complaint

36 F. T. C.

the State of New York, with its principal office and place of business at 42 Eagle Street, Brooklyn, N. Y.;

Gordon Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business at 8-10 Clifton Street, Newark, N. J., and their respective officers, and

Emil A. Creutzberg & Chester C. Creutzberg, copartners, trading under the firm name and style of Ideal Towel Supply Co., with their place of business at 138 Oakland Avenue, Jersey City, N. J.

The membership of said respondent Board changes from time to time, as did that of the said Mutual Club during its existence, by the addition and withdrawal of members, so that all members of said respondent Board at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it unduly burdensome to name them all individually as respondents herein; therefore, the above-named members of the respondent Board are also made respondents, as members of said Board, and individually and severally, and as representatives of all the members of said respondent association, as a class, including those members not herein specifically named who are thus made respondents herein.

PAR. 3. Respondent members at all times hereinafter mentioned have been engaged in the business of supplying, leasing, and renting, for a valuable consideration, to individual firms and corporations with places of business in the States of New Jersey and New York in and adjacent to Newark, N. J., and New York, N. Y., hereinafter referred to as the "metropolitan area" linen supplies, such as coats, trousers, aprons, frocks, towels, tablecloths, and other articles of merchandise, and at regular intervals, collecting the soiled linen supplies and substituting clean linen supplies therefor. Thereby said respondents created and maintained a constant and continuous current of commerce, as commerce is defined in the Federal Trade Commission Act, in said linen supplies and other like articles of merchandise between the respondent members and the lessees or renters of said supplies between the States of New Jersey and New York.

The volume of business done by respondent members constitutes approximately 90 percent of such business or trade in the Newark area and a substantial proportion of the whole metropolitan area above mentioned.

PAR. 4. Said respondent members are in competition with one another in the leasing or renting and distribution of said linen supplies and other like articles of merchandise in the area hereinbefore described, except insofar as their said competition has been hindered,

lessened, or restrained, or potential competition among them forestalled, by the practices and methods of said respondents hereinafter set forth.

There are other corporations, partnerships, firms, and individuals, not affiliated with respondent Board and which are engaged in the leasing or renting and distribution of such linen supplies and other like 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 use of said respondents' practices and policies hereinafter described.

PAR. 5. Respondents and said Mutual Club, during the past 5 years, have entered into, and carried out and maintained agreements, understandings, combinations, and conspiracies between and among themselves to suppress, hinder, and lessen competition in the supplying, leasing, renting, and distributing of said linen supplies in the course of their aforesaid business in commerce in the States of New Jersey and New York, particularly in the said metropolitan area.

Pursuant to and in furtherance of, and to make effective said agreements, understandings, combinations, and conspiracies, said respondent members with the active cooperation of the other respondents named herein, have done and performed and still do and perform, among others, the following acts and things:

1. Organized said Mutual Club and subsequently as aforesaid respondent Board to control and regulate the business of supplying the aforesaid linen supplies in the aforesaid area;

2. Adopted, fixed, and maintained schedules of uniform minimum prices and discounts and other terms and conditions for the use of their said linen supplies;

3. Reported to said Mutual Club and respondent Board the names of all customers to whom said linen supplies have been or are being supplied, leased, or rented;

4. Refrained from soliciting linen-supply business from customers of other respondent members without the consent or approval of said Mutual Club and respondent Board;

5. Adopted and maintained exclusive dealing contracts with their customers whereby respondent members require their customers to procure, rent, or lease linen supplies exclusively from the respective respondent members at all times;

6. Admitted independent competing linen supply houses to membership in said Mutual Club and respondent Board only upon condition that such independent supply houses indemnify respondent mem-

Complaint

36 F. T. C.

bers for business taken from them by said independent supply houses prior to the time they became members of said Mutual Club or respondent Board;

7. Required members of said club and respondent Board who bought out independent supply houses to indemnify respondent members for business taken from them by said independent supply houses prior to the time they became members of said Mutual Club or respondent Board;

8. Set up and maintained an arbitration board or committee as a disciplinary and punitive agency with authority to impose fines and suspend members who failed or refused to comply with the rules and regulations of said Mutual Club and respondent Board;

9. Operated "bogus" independent linen supply houses commonly known as "whips" to take business away from independent supply houses and to discipline respondent members who have violated the rules and regulations of said Mutual Club or respondent Board;

10. Through said Mutual Club and respondent Board checked and policed the prices at which respondent members supply, lease and rent said linen supplies and other like articles of merchandise to their customers by various means and methods, including the practice of renting vacant places of business with the pretense of opening up such business as a barber or beauty shop for the purpose of securing quotations on such supplies for respondent members;

11. Coerced or attempted to coerce manufacturers of linen supplies to refuse to sell or extend credit to linen supply houses not members of said Mutual Club or respondent Board.

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:

1. To unreasonably lessen, suppress, and restrain competition in the leasing and licensing of said linen supplies in the said metropolitan area, and to deprive the using public of the advantages of prices, terms, and conditions in connection with the leasing or renting 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.

2. To suppress, discriminate against and eliminate from business all competitors who are, or have been engaged in, or who desire to engage in, the leasing or renting of said linen supplies.

3. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in said linen supplies from, into and through the said metropolitan area.

4. To tend to monopolize in respondent members the business of leasing or renting the said linen supplies in the said metropolitan area.

PAR. 7. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition between and among said member respondents in the leasing or renting of their said supplies in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in member respondents power to control and enhance prices and other terms and conditions in connection with the leasing or renting 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 and unfair and deceptive 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 September 10, 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 and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The following respondents, namely, Linen Supply Board of Trade of New Jersey, Joseph Victor, Herman Maslow, Jack Orlinsky, Albert P. Gresser, Bernard Richman, Max Sack, John M. O'Donaghue, American Coat & Apron Supply Co., Inc., Clean Coat, Apron & Towel Supply Co., Inc., Economy Coat, Apron & Towel Supply Co., Inc., Falcon Ideal Coat & Apron Supply Co., J & R Coat, Apron & Towel Supply Co., Inc., Lackawanna Linen Supply & Laundry Co., New Jersey Toilet & Towel Supply Co., Noxall Linen Supply & Laundry Co., Admiration Coat, Apron & Towel Supply Co., Inc., Advance Coat, Apron & Towel Supply Co., Inc., Belmont Coat, Apron & Towel Supply Co., Inc., Central Linen Service, Inc., Commercial Coat & Apron Supply Co., Commercial Towel Service, Inc., Eagle Barber Towel Supply Co., Inc., Ellery Coat & Apron Supply Co., Inc., Globe Coat & Apron Supply Co., Inc., Gotham Towel Supply Co., Inc., Morgan Linen Service, Inc., Pilgrim Coat, Apron & Linen Service, Incorporated,

Findings

36 F. T. C.

Westchester Coat, Apron & Towel Supply Co., Inc., Henderson Coat & Apron Supply Co., Long Island Coat & Apron Supply Co., Inc., The Gordon Supply Co., and Emil A. Creutzberg and Chester C. Creutzberg, copartners trading under the firm name and style of Ideal Towel Supply Co., have filed their answers, in which answers they respectively admit all the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Linen Supply Board of Trade of New Jersey, is an incorporated association, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 1108 Broad Street, Newark, N. J., and is hereinafter referred to as respondent "Board."

The following individuals are, or were at some time during the time hereinafter mentioned, officers of said respondent Board and are designated as respondents in the complaint herein, namely, Joseph Victor, president; Herman Maslow, vice president; Herbert N. Farrington, treasurer, who has died since the issuance of the complaint without filing an answer; and Jack Orlinsky, secretary.

The following individuals, together with said officers, are members of the Board of Directors of respondent Board and are designated as respondents in the complaint herein filed, namely, Albert P. Gresser, Bernard Richman, Max Sack, and John M. O'Donaghue.

The membership of respondent Board is made up of numerous corporations, partnerships, firms, and individuals engaged in the supplying, leasing, and renting of linen supplies, such as coats, trousers, aprons, frocks, towels, tablecloths, and other like articles of merchandise.

Respondent Board is the successor of Mutual Club, a voluntary, unincorporated association, commonly referred to as a trade association, organized, owned, controlled, and operated by members of the said linen supply business, acting through the officers and directors thereof, for more than 5 years prior to the issuing of the complaint herein, the same having been organized to aid and assist them in carrying out the agreements, understanding, combinations, and conspiracies hereinafter referred to and set forth. Said respondent

Board was organized about 1937 for the purpose of taking over the property, effects, functions, and activities engaged in and conducted by said Mutual Club, but said Board did not actually take over the affairs and the property of Mutual Club and engage in the acts and practices engaged in and conducted by said Mutual Club until about April 1941, at which time it took over all the property, assets, effects, records, and affairs of said Mutual Club, and has since engaged in and conducted the business for which it was organized by said members and theretofore engaged in and conducted by said Mutual Club, as aforesaid, as their representative, and in the place and stead of the said Mutual Club and in the manner hereinafter set forth.

PAR. 2. Among the members of said Mutual Club and its successor are, or were during the time hereinabove mentioned, the following:

Reliable Linen Supply Co., a corporation, organized and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 23 Branford Street, Newark, N. J. This respondent has ceased doing business since the issuance of the complaint herein and no answer has been filed on its behalf.

American Coat & Apron Supply Co., Inc. (referred to in the complaint as American Coat and Apron Supply Co., Inc.), a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 148 Huntington Terrace, Newark, N. J.

Clean Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 92-94 Oakland Avenue, Jersey City, N. J.

Economy Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 40 Lane Street, Paterson, N. J.

Falcon Ideal Coat & Apron Supply Co. (referred to in the complaint as Falcon Ideal Coat & Apron Supply Co.), a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 14 West Kinney Place, Newark, N. J.

J & R Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 536 Thirty-fourth Street, Union City, N. J.

Lackawanna Linen Supply & Laundry Co., a corporation organized, existing, and doing business under and by virtue of the

Findings

36 F. T. C.

laws of the State of New Jersey, with its principal office and place of business at 35 High Street, Newark, N. J.

New Jersey Toilet & Towel Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 12 Clifton Street, Newark, N. J.

Noxall Linen Supply & Laundry Co. (referred to in the complaint as Noxall Linen Supply and Laundry Co.), a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 95 Temple Avenue, Newark, N. J.

Admiration Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 436 East Nineteenth Street, New York City.

Advance Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 436 East Nineteenth Street, New York City.

Banner Coat, Apron & Towel Supply Co., a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 155 Waverly Place, New York City. This respondent has been dissolved and no answer has been filed by it.

Belmont Coat, Apron & Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 605 West Forty-second Street, New York City.

Brew Coat & Apron Supply Co., Inc., a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 543 West Twenty-third Street, New York City. This respondent has been dissolved and no answer has been filed by it.

Central Linen Service, Inc. (referred to in the complaint as Central Coat, Apron & Linen Supply Co.), a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 275 Westside Avenue, Jersey City, N. J.

Commercial Coat & Apron Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 605 West Forty-second Street, New York City.

Commercial Towel Service, Inc. (referred to in the complaint as Commercial Towel Supply, Inc.), a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 123 Pitt Street, New York City.

Eagle Barber Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 772 Myrtle Avenue, Brooklyn, N. Y.

Ellery Coat & Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 617-25 East Eighteenth Street, New York City.

Globe Coat & Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 520 West Forty-eighth Street, New York City.

Gotham Towel Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 543 West Twenty-third Street, New York City.

Grammercy Linen Supply Co., Inc., a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 543 West Twenty-third Street, New York City. This respondent has been dissolved and no answer has been filed by it.

Modern Silver Linen Supply Co., Inc., a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 540 West Twenty-fourth Street, New York City. This respondent has been dissolved and no answer has been filed by it.

Morgan Linen Service, Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 484 Eleventh Avenue, New York City.

Pilgrim Coat, Apron & Linen Service, Incorporated (referred to in the complaint as Pilgrim Coat, Apron & Linen Service, Inc.), a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 555 West Forty-second Street, New York City.

Prudential Coat, Apron & Towel Supply Co., Inc., a corporation, organized and doing business under and by virtue of the laws of the

Findings

33 F. T. C.

State of New York, with its principal office and place of business at 454 West One Hundred Twenty-eighth Street, New York City. This respondent has been dissolved and no answer has been filed by it.

Cosmopolitan Linen Supply Laundry Co., Inc., a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 533 West Forty-second Street, New York City. This respondent appears to have been merged with another corporation some years ago, and apparently has not been a member of respondent Board for a considerable length of time, and therefore no answer has been filed on its behalf.

Westchester Coat, Apron & Towel Supply Co., Inc. (referred to in the complaint as Westchester Coat & Apron Supply Co., Inc.), a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 64-66 Warburton Avenue, Yonkers, N. Y.

Henderson Coat & Apron Supply Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 335 East Thirty-second Street, New York City.

Long Island Coat & Apron Supply Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 42 Eagle Street, Brooklyn, N. Y.

The Gordon Supply Co. (referred to in the complaint as Gordon Supply Co.), a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business at 8-10 Clifton Street, Newark, N. J.

Emil A. Creutzberg and Chester C. Creutzberg, copartners, trading under the firm name and style of Ideal Towel Supply Co., with their place of business at 138 Oakland Avenue, Jersey City, N. J.

PAR. 3. Respondent members during the time hereinafter mentioned have been engaged in the business of supplying, leasing, and renting, for a valuable consideration, to individuals, firms, and corporations with places of business in the States of New Jersey and New York in and adjacent to Newark, N. J., and New York, N. Y. (hereinafter referred to as the "metropolitan area"), linen supplies such as coats, trousers, aprons, frocks, towels, tablecloths, and other articles of merchandise, and at regular intervals collecting the soiled linen supplies and substituting clean linen supplies therefor. Thereby said respondents created and maintained a constant and continuous current of commerce, as "commerce" is defined in the Federal Trade Commission Act, in said linen supplies and other like articles of merchan-

dise between the respondent members and the lessees or renters of said supplies, between the States of New Jersey and New York.

The volume of business done by respondent members constitutes approximately 90 percent of such business or trade in the Newark area, and a substantial proportion of that in the whole metropolitan area above mentioned.

PAR. 4. Said respondent members are, or were during the time hereinafter mentioned, in competition with one another in the leasing or renting and distribution of said linen supplies and other like articles of merchandise in the area hereinbefore described, except insofar as their said competition has been hindered, lessened, or restrained, or potential competition among them forestalled, by the practices and methods of said respondents hereinafter set forth.

There are other corporations, partnerships, firms, and individuals not affiliated with respondent Board, and which are engaged in the leasing or renting and distribution of such linen supplies and other like 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 use of said respondents' practices and policies hereinafter described.

PAR. 5. Respondents and said Mutual Club, during the time mentioned in the complaint herein, have entered into and carried out and maintained agreements, understandings, combinations, and conspiracies between and among themselves to suppress, hinder, and lessen competition in the supplying, leasing, renting, and distribution of said linen supplies in the course of their aforesaid business in commerce in the States of New Jersey and New York, particularly in the said metropolitan area.

Pursuant to and in furtherance of, and to make effective said agreements, understandings, combinations, and conspiracies, said respondent members, with the active cooperation of the other respondents named herein, during the time mentioned in the complaint herein, have done and performed, among others, the following acts and things:

1. Organized said Mutual Club and, subsequently, as aforesaid, respondent Board to control and regulate the business of supplying the aforesaid linen supplies in the aforesaid area.

2. Adopted, fixed, and maintained schedules of uniform minimum prices and discounts and other terms and conditions for the use of their said linen supplies.

3. Reported to said Mutual Club and respondent Board the names of all customers to whom said linen supplies have been or are being supplied, leased, or rented.

4. Refrained from soliciting linen supply business from customers of other respondent members without the consent or approval of said Mutual Club and respondent Board.

5. Adopted and maintained exclusive dealing contracts with their customers whereby respondent members require their customers to procure, rent, or lease linen supplies exclusively from the respective respondent members at all times.

6. Admitted independent competing linen supply houses to membership in said Mutual Club and respondent Board only upon condition that such independent supply houses indemnify respondent members for business taken from them by said independent supply houses prior to the time they became members of said Mutual Club or respondent Board.

7. Required members of said club and respondent Board who bought out independent supply houses to indemnify respondent members for business taken from them by said independent supply houses prior to the time they became members of said Mutual Club or respondent Board.

8. Set up and maintained an arbitration board or committee as a disciplinary and punitive agency, with authority to impose fines and suspend members who failed or refused to comply with the rules and regulations of said Mutual Club and respondent Board.

9. Operated "bogus" independent linen supply houses, commonly known as "whips," to take business away from independent supply houses and to discipline respondent members who violated the rules and regulations of said Mutual Club or respondent Board.

10. Through said Mutual Club and respondent Board, checked and policed the prices at which respondent members supply, lease, and rent said linen supplies and other like articles of merchandise to their customers by various means and methods, including the practice of renting vacant places of business with the pretense of opening up such places as barber or beauty shops for the purpose of securing quotations on such supplies for respondent members.

11. Coerced, or attempted to coerce, manufacturers of linen supplies into refusing to sell or extend credit to linen supply houses not members of said Mutual Club or respondent Board.

PAR. 6. The capacity, tendency, and effect of the aforesaid agreements, understanding, combinations, and conspiracies, and the policies, practices, acts, and things done and performed by respondents in pursuance thereof, are and have been:

1. To unreasonably lessen, suppress, and restrain competition in the leasing and licensing of said linen supplies in the said metropolitan area, and to deprive the using public of the advantages of prices,

terms, and conditions in connection with the leasing or renting 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 and obstruction and detriment to the freedom of fair and legitimate competition in such trade and industry.

2. To suppress, discriminate against, and eliminate from business all competitors who are or have been engaged in, or who desire to engage in, the leasing or renting of said linen supplies.

3. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in said linen supplies from, into, and through the said metropolitan area.

4. To tend to monopolize in respondent members the business of leasing or renting the said linen supplies in the said metropolitan area.

CONCLUSION

The acts and practices of said respondents, 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 leasing or renting of their said supplies in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in member respondents power to control and enhance prices and other terms and conditions in connection with the leasing or renting 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of all the respondents now in existence, in which answers the said respondents admit all the material allegations of fact set forth in said complaint and waive 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 said respondents have violated the provisions of section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, Linen Supply Board of Trade of New Jersey, an incorporated association; Joseph Victor, Herman Maslow, Jack Orlinsky, Albert P. Gresser, Bernard Richman, Max

Sack, and John M. O'Donaghue, both individually and as officers and members of the board of directors of respondent Board, respectively; American Coat & Apron Supply Co., Inc., a corporation; Clean Coat, Apron & Towel Supply Co., Inc., a corporation; Economy Coat, Apron & Towel Supply Co., Inc., a corporation; Falcon Ideal Coat & Apron Supply Co., a corporation; J & R Coat, Apron & Towel Supply Co., Inc., a corporation; Lackawanna Linen Supply & Laundry Co., a corporation; New Jersey Toilet & Towel Supply Co., a corporation; Noxall Linen Supply & Laundry Co., a corporation; Admiration Coat, Apron & Towel Supply Co., Inc., a corporation; Advance Coat, Apron & Towel Supply Co., Inc., a corporation; Belmont Coat, Apron & Towel Supply Co., Inc., a corporation; Central Linen Service, Inc., a corporation; Commercial Coat & Apron Supply Co., a corporation; Commercial Towel Service, Inc., a corporation; Eagle Barber Towel Supply Co., Inc., a corporation; Ellery Coat & Apron Supply Co., Inc., a corporation; Globe Coat & Apron Supply Co., Inc., a corporation; Gotham Towel Supply Co., Inc., a corporation; Morgan Linen Service, Inc., a corporation; Pilgrim Coat, Apron & Linen Service, Inc., a corporation; Westchester Coat, Apron & Towel Supply Co., Inc., a corporation; Henderson Coat & Apron Supply Co., a corporation; Long Island Coat & Apron Supply Co., Inc., a corporation; The Gordon Supply Co., a corporation; and Emil A. Creutzberg and Chester C. Creutzberg, copartners trading under the firm name and style of Ideal Towel Supply Co.; and their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the leasing or renting and distribution of linen supplies and other like articles of merchandise 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 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. Adopting, fixing, or maintaining schedules of uniform minimum prices and discounts or other terms and conditions for the use of their said linen supplies.
2. Reporting to respondent Board the names of customers to whom said linen supplies have been or are being supplied, leased, or rented.
3. Refraining from soliciting linen supply business from customers of other respondent members except with the consent or approval of said Board.

4. Adopting or maintaining exclusive dealing contracts with their customers whereby respondent members, respectively, require their customers to procure, rent, or lease linen supplies exclusively from the respondent members at all times.

5. Requiring as a condition precedent to the admission of independent competing linen supply houses to membership in respondent Board that such independent supply houses indemnify respondent members for business taken from them by said independent supply houses prior to the time they become members of respondent Board.

6. Requiring members of respondent Board who buy out independent supply houses to indemnify respondent members for business taken from them by said independent supply houses prior to the time they become members of respondent Board.

7. Setting up or maintaining an arbitration board or committee as a disciplinary or punitive agency with authority to impose fines or suspend members who fail or refuse to comply with the rules and regulations of respondent Board.

8. Establishing or operating "bogus" independent linen supply houses, commonly known as "whips," to take business away from independent supply houses, or to discipline respondent members who violate the rules and regulations of respondent Board.

9. Checking and policing, by any means or methods, the prices at which respondent members supply, lease, or rent said linen supplies and other like articles of merchandise to their customers.

10. Coercing or attempting to coerce manufacturers of linen supplies into refusing to sell or extend credit to linen supply houses not members of respondent Board.

11. Employing or utilizing respondent Board or any arbitration board, committee, or other central agency as a punitive or disciplinary agency to enforce rules or regulations pertaining to costs and prices, or as an instrument, vehicle, or aid in performing or doing any of the acts or things prohibited by this order.

It is further ordered, That the foregoing 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 the respondents, Herbert N. Farrington, Reliable Linen Supply Co., Banner Coat, Apron & Towel Supply Co., Brew Coat & Apron Supply Co., Inc., Grammercy Linen Supply Co., Inc., Modern Silver Linen Supply Co., Inc., Prudential Coat, Apron & Towel Supply Co., Inc., and Cosmopolitan Linen Supply Laundry Co., Inc.

IN THE MATTER OF
WESTVILLE REFINERY, INC.

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

Docket 4370. Complaint, Nov. 7, 1940—Decision, Mar. 27, 1943

Where a corporation, engaged in reclaiming and processing used motor oil, and in interstate sale and distribution of said product in competition with others dealing in reclaimed motor oils and in new motor oils refined from virgin crude oils—

- (a) Represented that it operated an oil refinery, through use of word "Refinery" in its corporate name which it displayed as such or in its abbreviated form on letterheads, invoices, and other printed material, and on labels attached to the containers in which its products were displayed and sold;

The facts being it was engaged solely in reclaiming and processing used motor oil obtained from the draining of motor crankcases; did not handle virgin crude oil at all, or have the equipment required for the refining of such oil;

- (b) Represented that its products were "Pennsylvania" oil, were made entirely from paraffin base stock, and were new and unused oils made from virgin crude oil, through display on containers thereof of legends "Para-Penn Motor Oil"; "Superlube—100% pure Pennsylvania base dewaxed Motor Oil"; "This oil is Refined from 100% Pure Pennsylvania and Other High Grade Paraffin Base Motor Oils"; "* * * refined from our choicest paraffin base stocks"; "Packed at the refinery * * *"; and "America's Finest Motor Oil";

The facts being products in question were not "Pennsylvania oil," or made from crude oil produced in the Pennsylvania oil fields or western portion of Pennsylvania and contiguous portions of Ohio, New York, and West Virginia, well and favorably known to the purchasing public and preferred by a substantial portion thereof over oils originating in other localities; nor were said oils made entirely from paraffin base stock, similarly preferred; nor, as implied, new unused oil refined from the virgin crude oil, but, obtained principally from Chicago and Detroit dealers, they were mixed indiscriminately before receipt by it, and it was without knowledge as to what part, if any, of its oil had its origin in the Pennsylvania oil fields or other fields producing oil with paraffin base; and

- (c) Failed to disclose the true nature of its products, which had the appearance of new and unused oil and were sold in containers such as are used for new oil, with resulting deception of the public;

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public in aforesaid respects, thereby inducing purchase of substantial quantities of such products; whereby trade was diverted unfairly to said corporation from its competitors, among whom are those who do not misrepresent their business status or nature 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. R. A. McOuat, *Mr. S. Brogdyne Teu, II*, and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Vernon B. Lowrey and *Mr. Charles C. Shea*, of Washington, D. C., and *Mr. William A. Flanigan*, of Highland Park, Mich., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Westville Refinery, 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, Westville Refinery, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Indiana, with its principal office and place of business located in the city of Westville, State of Indiana.

PAR. 2. Respondent has been for more than 3 years last past, and is now, engaged in the business of reclaiming and processing used motor oil and in selling and distributing such reclaimed oil in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes such oil, when sold, to be transported from its principal place of business in Indiana to purchasers thereof located in States of the United States other than Indiana, and in the District of Columbia.

PAR. 3. During the time above mentioned, other corporations and individuals and firms in various States of the United States have been engaged in the sale and distribution, in commerce between and among the various States of the United States and in the District of Columbia, of reclaimed motor oils. Other corporations, individuals, and firms have been similarly engaged in the sale and distribution in commerce among and between the various States of the United States of new and unused motor oils refined from virgin crude oils. Respondent has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with such corporations, individuals, and firms.

PAR. 4. In connection with the offering for sale and sale of its said reclaimed motor oil, as aforesaid, respondent represents that it operates an oil refinery. Said representation is made by use of the word "re-

Complaint

36 F. T. C.

finery" in its corporate name, "Westville Refinery, Inc.," and by an abbreviated form thereof, "Westville Refinery;" by the use of one or the other of said names on its letterheads, invoices, and other printed matter, as well as on labels attached to the containers in which its said product is sold and in which said product is displayed for sale to the consuming public; and by otherwise referring to its reclaiming plant as a refinery.

In truth and in fact, respondent does not own and operate or control an oil refinery in the sense in which such term is used and understood among members of the petroleum industry and by members of the purchasing public, namely, a place with the proper and usual equipment where virgin crude oil is refined and prepared for use. Respondent does not refine and prepare virgin crude oil for use nor does it have the proper and usual equipment for such purpose. Respondent is engaged solely in reclaiming and processing used motor oil from crankcase drainings.

PAR. 5. In connection with the offering for sale and sale of its said product, respondent represents that its said product is Pennsylvania oil with a paraffin base; that the base thereof, is wholly Pennsylvania oil; and that it is made solely from paraffin base stock. Such representations are made by statements printed on the labels attached to the containers in which said product is displayed for sale and sold to the public, and include the following:

Para-Penn Motor Oil

Superlube—100% pure Pennsylvania base dewaxed Motor Oil.

This oil is Refined from 100% Pure Pennsylvania and Other High Grade Paraffin Base Motor Oils.

* * * refined from our choicest paraffin base stocks.

The use by the respondent of the brand name "Para-Penn" to designate and describe its said motor oil constitutes within itself a representation that the oil so designated is oil from the Pennsylvania oil field and that it has a paraffin base.

In truth and in fact, respondent's said product is not Pennsylvania oil, nor is it made wholly from paraffin base stock. The used motor oil from which respondent prepares its product constitutes a mixture of oils from various oil fields, including fields and regions producing oils which do not have a paraffin base. The process used by respondent in preparing its product does not remove all of the oils which originated in such other fields. Some of the used oil from which respondent's product is made may have come originally from the Pennsylvania oil field and some may have come from other oil fields producing oil having a paraffin base. Respondent, however, has no knowledge as to what, if any, part of the used motor oil from which

its product is made comes from the Pennsylvania oil field nor as to what part comes from other oil fields producing oil with a paraffin base.

The term "Pennsylvania Oil," as used in the petroleum industry, and as understood by the trade and the consuming public, means oil made from crude oil produced in the geographical area known as the Pennsylvania oil field. For many years Pennsylvania oil has been well and favorably known to the purchasing public, and there is a marked preference on the part of a substantial portion of the purchasing public for such oil over oils having their origin in other localities. Many members of the purchasing public also prefer motor oils having a paraffin base, irrespective of the place of origin of such oils, to motor oils not having such base.

PAR. 6. Respondent, in connection with the offering for sale and sale of its said product, makes use of words, terms, phrases, and statements which represent, import, or imply that its said reclaimed and processed motor oil is new and unused oil made from virgin, crude oil. Examples of such words, terms, phrases, and statements which appear on the containers in which respondent's product is displayed for sale and sold to the trade and to the consuming public, are the following:

Packed at the refinery * * *

Para-Penn Motor Oil.

America's Finest Motor Oil.

* * * Refined From Our Choicest Paraffin Base Stocks.

This Oil is Refined from 100% Pure Pennsylvania and Other High Grade Paraffin Base Motor Oils.

Such implication is further created by the use of respondent's corporate name, or contraction thereof, containing the word "Refinery," in connection with the sale of said product as previously set out herein.

The implication that the respondent's product is new and unused oil refined from virgin, crude oil is further increased by the fact that respondent's product, when reclaimed and processed, has the appearance of new, unused oil and by the further fact that it is sold in and from drums and cans of the general size, kind, and appearance of those used in the sale of new, unused oil. Said containers bear no label or marking indicating that said product is old, used oil from motor crankcase drainings which has been reclaimed and processed.

The general understanding and belief on the part of dealers and the purchasing public, in the absence of information clearly disclosing the contrary, is that motor oil having the appearance of new and unused oil and sold in or from containers such as are used for new oil, is in fact new and unused oil and not used oil which has been reclaimed and processed. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used

oil which has been reclaimed and processed, such preference being due in part to a belief on the part of the public that new and unused oil is superior in quality to oil which has been previously used.

In truth and in fact, respondent's said motor oil is not new and unused oil refined from virgin, crude oil, but is composed entirely or substantially of old, used oil from the drainings of motor crankcases which has been reclaimed and processed by respondent. In order to produce oils lighter or heavier than the oil produced by respondent's methods of reclaiming and processing the old, used motor oil, as aforesaid, respondent at times causes to be added to such reclaimed and processed oil, a small percentage of new oil to effect the desired variations but such additions, when made, are not sufficient in amount to change the general character of the resulting mixture.

PAR. 7. The acts and practices of the respondent as herein set forth serve also to place in the hands of uninformed and unscrupulous dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 8. The aforesaid acts and practices of the respondent have the tendency and capacity to, and do, mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the origin and nature of respondent's product and with respect to respondent's business status, and as a result the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's product. Trade has thereby been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent their business status or the origin or nature of their products, and in consequence 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. 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 Nov. 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Westville Refinery, 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 before trial examiners of the Commission theretofore duly designated by it (no evidence being offered on behalf of respondent), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, 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, Westville Refinery, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Indiana, with its principal office and place of business located in the City of Westville, Ind. Respondent is now and for a number of years last past has been engaged in the business of reclaiming and processing used motor oil and selling and distributing such reclaimed oil.

PAR. 2. Respondent causes and has caused its products, when sold, to be transported from its place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia. 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 respondent is and has been in substantial competition with other corporations and with firms and individuals engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of reclaimed motor oils and of new and unused motor oils refined from virgin crude oils.

PAR. 4. In connection with the offering for sale and sale of its products respondent has represented that its operates an oil refinery, such representation being made through the use of the word "Refinery" in its corporate name, "Westville Refinery, Inc.," and in the abbreviated form, "Westville Refinery," which is also used by respondent. One or the other of these names has appeared on respondent's letterheads, invoices and other printed material, as well as on labels

attached to the containers in which respondent's products are displayed for sale and sold to the public.

The Commission finds from the evidence that respondent does not operate an oil refinery in the sense in which such term is used and understood in the petroleum industry and by the purchasing public, namely, a plant in which virgin crude oil is refined and the various products thereof separated and prepared for commercial use. Respondent is engaged solely in reclaiming and processing used motor oil obtained from the draining of motor crankcases. It does not handle virgin crude oil at all, nor does its plant have the equipment required for the refining of crude oil.

PAR. 5. There also appear on the labels attached to the containers in which respondent's products are displayed and sold the following legends or statements:

Para-Penn Motor Oil.

Superlube—100% pure Pennsylvania base dewaxed Motor Oil.

This oil is Refined from 100% Pure Pennsylvania and Other High Grade Paraffin Motor Base Oils.

* * * refined from our choicest paraffin base stocks.

Packed at the refinery * * *

America's Finest Motor Oil.

Through the use of these legends and statements, and others of a similar nature, respondent has represented, directly or by implication, that its products are "Pennsylvania" oil, that they are made entirely from paraffin base stock, and that they are new and unused oils made from virgin crude oil.

The implication that respondent's products are new and unused oil refined from virgin crude oil is strengthened as a result of the use of the word "Refinery" in respondent's corporate and trade name, and by reason of the fact that respondent's products have the appearance of new and unused oil and are displayed and sold in containers of the same general size and appearance as those used for new, unused oil. Respondent's containers bear no label or marking indicating that the product is used oil from motor crankcase drainings which has been reclaimed and processed.

PAR. 6. The term "Pennsylvania oil," as used in the petroleum industry and as understood by the trade and a substantial portion of the consuming public, means oil made from crude oil produced in the geographical area known as the Pennsylvania Oil Field, which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia. Pennsylvania oil has for some time been well and favorably known to the purchasing public, and there is a preference on the part of a substantial portion of the public for such oil over oils having their origin in other localities. There is also

a preference on the part of a substantial portion of the public for motor oils having a paraffin base over those which do not have such base.

PAR. 7. The evidence further shows that in the absence of information to the contrary, dealers and members of the purchasing public usually understand and believe that motor oil having the appearance of new and unused oil and sold in containers such as are used for new oil is in fact new and unused oil rather than used oil which has been reclaimed and processed. There is a preference on the part of a substantial portion of the public for new and unused oil over a reclaimed product, such preference being due in part to a belief that new and unused oil is superior in quality.

PAR. 8. Respondent's products are not Pennsylvania oil, nor are they made entirely from paraffin base stock. The used oil from which respondent's products are made is obtained by it from various sources, principally from dealers in Chicago, Ill., and Detroit, Mich. Some of the oil may have had its origin in the Pennsylvania Oil Field, and some of it may have originated in other oil fields producing oil having a paraffin base. The various oils, however, have been mixed indiscriminately before they are received by respondent, and respondent has no knowledge as to what, if any, part of the oil had its origin in the Pennsylvania Oil Field or in other fields producing oil having a paraffin base. The Commission therefore finds that the terms "Pennsylvania," "Para-Penn," and "paraffin base," used by respondent to describe its products, are erroneous and misleading, as are also the other statements representing or implying that respondent's products are new, unused oil refined from virgin crude oil. The Commission further finds that the failure of respondent to disclose the true nature of its products likewise results in the deception of the public.

PAR. 9. The acts and practices of the respondent as herein set forth 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 and nature of respondent's products and with respect to respondent's business status, and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief engendered through such acts and practices. In consequence, substantial trade has been diverted unfairly to respondent from its competitors, among whom are those who do not misrepresent their business status or the origin or nature of their products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondent's competitors, and

Order

36 F. T. C.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence in support of the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it (no evidence having been offered by respondent), 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, Westville Refinery, 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 oil in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Refinery," or any other word of similar import, as a part of respondent's corporate or trade name; or otherwise representing, directly or by implication, that respondent owns, operates, or controls a refinery.
2. Using the word "Pennsylvania," "Penn," or "Para-Penn," or any other word of similar import, to designate or describe respondent's products; or otherwise representing, directly or by implication, that respondent's products are Pennsylvania oil.
3. Representing, directly or by implication, that respondent's products are made entirely from oils having a paraffin base.
4. Representing, directly or by implication, that respondent's products are new and unused oil made from virgin crude oil.
5. Advertising, offering for sale, or selling respondent's products without disclosing clearly and conspicuously in respondent's advertising and invoices, and on the containers in which such products are displayed and sold, that such products are used oil which has been reclaimed.

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

MARSHALL FIELD & COMPANY, DOING BUSINESS AS
KARASTAN RUG MILLSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4493. Complaint, Apr. 26, 1941—Decision, Mar. 27, 1943*

Where a corporation, engaged under the name "Karastan Rug Mills" in the manufacture and competitive interstate sale and distribution of rugs which so closely simulated the true Oriental, hand-made product with its knotted threads and other distinctive features, as to be practically indistinguishable therefrom, including as its leading line its "Karastan" rug for which it used the advertising slogan "Karastan * * * The Wonder Rug of America," more recently also included the term "Machine Woven U. S. A." and in connection with which it described the similarity to Oriental rugs accomplished by power loom weaving, and which it further featured in the labeling and advertising of its other rugs through use of the statement "By the Makers of Karastan"—

- (a) Represented that certain of its said rugs were genuine Orientals and made in the Orient by hand, through designation of its said machine made products by such coined names as "Karashah," "Karavere," "Kharol" and "Kara Kirman" in simulation of the names of such true Orientals as "Karadagh," "Karabagh," and "Karajah" of northern Persia and the southern Caucasus, or the well-known Turkish "Kirman";
- (b) Represented that certain of its rugs were "Oriental Reproductions" or "Authentic Oriental Reproductions" through labels firmly attached thereto and plainly discernible in connection with retailers' display of the rugs for sale;

When in fact they were not exact copies or reproduction of true Orientals in structure or method of manufacture, but merely simulated the appearance thereof, and, while in some instances it had endeavored to copy designs of typical Oriental rugs, in others it used designs which it had created and which were adaptations or combinations of Oriental motifs;

With tendency and capacity to mislead purchasers into the mistaken belief that such representations and designations were true and that rugs so designated were genuine Oriental rugs, thereby inducing purchase thereof; and with effect of placing in the hands of retail dealers means of misleading and deceiving the purchasing public; with result that trade was diverted unfairly to it from competitors who truthfully represent their products:

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

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

Mr. Randolph W. Branch for the Commission.

Wilson & McIlvaine, of Chicago, Ill., for respondent.

Complaint

36 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 Marshall Field & Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Marshall Field & Co., is a corporation, organized and existing under the laws of the State of Illinois and having an office and principal place of business at 222 North Bank Drive in the city of Chicago, State of Illinois. Respondent also maintains an office at 295 Fifth Avenue, New York City, N. Y., and a manufacturing plant at Leakesville, N. C.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing and selling rugs under the name of Karastan Rug Mills. In the course and conduct of its business, respondent sells said rugs to various wholesale and retail dealers, and causes such rugs, when sold, to be transported from its aforesaid place of business in the States of Illinois, New York, and North Carolina to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rugs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent either the place or method of manufacture or nature of their products and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the

threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a substantial demand on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the purchase of certain of its rugs, respondent has engaged in the practice of describing and designating said rugs, which closely resemble true Oriental rugs in appearance, by the names of "Karastan," "Karashah," "Karavere," "Kara Kirman" and "Kharol."

There are true Oriental rugs known as "Karabagh," "Karadagh," "Karageuze," "Karaman," "Karahissar," "Karajah" and "Kirman," and the use by respondent of the designations "Karastan," "Karashah," "Karavere" and "Kara Kirman" has the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact genuine Oriental rugs. The name "Kharol" suggests and connotes the Orient and has the tendency and capacity to induce the mistaken and erroneous belief that the rugs so designated are in fact genuine Oriental rugs.

Respondent uses said names to designate the said rugs in invoices to dealers and in otherwise referring to the same in the sale thereof to dealers, and in advertisements in magazines of general circulation in the rug trade.

To the various rugs designated by respondent as above set forth, it firmly attaches labels upon which the particular name conspicuously appears; in addition to the names, the "Kharol" and "Kara Kirman" labels also bear depictions of Oriental scenes. All of said labels are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers.

In truth and in fact, respondent's rugs hereinabove referred to are woven on power looms in its factory in the United States. They are not made by hand, and the individual threads are not knotted in the distinctive manner of the true Oriental rug. They do not possess all the characteristics of true Oriental rugs, but do in fact so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public, and, in consequence, are readily accepted as being true Oriental rugs.

PAR. 6. In the course and conduct of its business and for the purpose of inducing the purchase of certain of its rugs, respondent has engaged in the practice of representing that they are "Oriental reproductions"

Complaint

36 F. T. C.

or authentic Oriental reproductions. Such representations are made by means of labels firmly attached by respondent to said rugs, which are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers. Among and typical of the statements which appear upon such labels are the following:

Kara Sultana
Authentic Oriental Reproduction
Woven of fine Oriental yarn.

Kara Sultana
Authentic Oriental Reproduction
All wool face.

Kara Imperial
Authentic Oriental Reproduction
by
The Karastan Rug Mills.

Kara Imperial
Authentic Oriental Reproduction
by
Karastan Rug Mills.
Woven of fine imported wool
All wool face.

Kara-Furn
Oriental Reproduction
Woven of fine Oriental yarn.

Kara-Furn
Oriental Reproduction
All wool face.

In truth and in fact, said rugs are not exact copies, or reproductions of true Orientals in structure or method of manufacture, but merely simulate them in appearance. While in some instances respondent has endeavored to copy the designs of particular Oriental rugs, in others it has used designs which it has created and which are adaptations or combinations of Oriental motifs.

PAR. 7. The use by respondent of the designations, depictions and representations as set forth herein in connection with the offering for sale and sale of its said rugs has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have the effect of placing in the hands of retail dealers who purchase said rugs and resell the same to the purchasing public, means and instrumentalities for misleading and deceiving the public in the particulars aforesaid.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 26, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Marshall Field & Co., a corporation, trading and doing business under the name Karastan Rug Mills, 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 James A. Purcell, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument 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, Marshall Field & Co., is a corporation, organized and existing under the laws of the State of Illinois and having an office and principal place of business at 222 North Bank

Drive in the City of Chicago, State of Illinois. Respondent also maintains an office at 295 Fifth Avenue, New York, N. Y., and a manufacturing plant at Leaksville, N. C.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, distributing, and selling rugs under the name of Karastan Rug Mills. In the course and conduct of its business, respondent sells said rugs to various wholesale and retail dealers and causes such rugs, when sold, to be transported from its aforesaid places of business in the States of Illinois, New York, and North Carolina to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rugs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient or, more particularly, in certain parts of southwest Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a substantial demand on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase of certain of its rugs, respondent has engaged in the practice of describing and designating said rugs, which closely resemble true Oriental rugs in appearance, by the names of "Karastan," "Karashah," "Karavere," "Kara Kirman," and "Kharol." The Karastan rug is respondent's leading or more expensive line of domestic rugs and is further featured in the labeling and advertising of its various other domestic rugs through the use of the statement "By the makers of Karastan." The rugs so designated by the respond-

ent are woven on power looms in its factory in the United States. They are not made by hand, and the individual threads are not knotted in the distinctive manner of the true Oriental rug. The wool used in the manufacture of said rugs is in part imported from various foreign countries, and a substantial part of the wool so imported and used is of South American and European origin. The dyes used in the manufacture of such rugs are commercial coal-tar dyes of American manufacture. In the weaving of respondent's Karastan and Karashah rugs, the design is woven through to the back, which is a characteristic of Oriental rugs. The designs, motifs, and figures used in the weaving of respondent's rugs are obtained by tracings from original Orientals, and the color is simulated as closely as possible. The rugs, after manufacture, are chemically washed, thereby chlorinating the wool, which is the same general process used on genuine Oriental rugs for the purpose of enhancing the beauty, luster, and sheen and to soften the color. Respondent's rugs so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public. There are no true Oriental rugs known as "Karastan," "Karashah," "Karavere," "Kara Kirman," and "Kharol," and said words are not names of true Oriental rugs or of any district, place, or tribe in the Orient but are coined names originated by the respondent. The respondent has discontinued the use of the terms "Kara Kirman," "Karavere," and "Kharol" in designating its rugs.

PAR. 6. In earlier labeling of respondent's rugs the respondent attached thereto labels containing such designated names without further designating or describing the place of origin or manufacture of such rugs. In its later and more recent labeling the respondent has placed on its labels the terms "Machine Woven in U. S. A." In addition thereto, in connection with the advertising of its Karastan rugs, the respondent has used the slogan "Karastan * * * The Wonder Rug of America," which advertisements also usually carry the term "Machine Woven U. S. A." and the context of such advertisements usually describes the similarity to Oriental rugs, which has been accomplished by power-loom weaving. Such advertising is issued by the respondent and supplied to dealers for use by them in advertising said rugs.

PAR. 7. The use by the respondent of the word "Karashah" to designate or describe certain of its rugs is a simulation of the names of true Oriental rugs known as "Karadagh," "Karabagh," and "Karajah," which are produced in northern Persia and the southern Caucasus, and further constitutes a representation that the rugs so designated

are true Oriental rugs in all respects, made in the Orient by hand. The use of the words "Kara Kirman" to designate or describe certain other of its rugs is a simulation of the name of a true Oriental rug known as "Kirman," which is produced in Turkey and is well known in the United States, and further constitutes a representation that the rugs so designated are true Oriental rugs in all respects, made in the Orient by hand. In like manner the use of the words "Karavere" and "Kharol," together with the manner in which said rugs were labeled by the respondent, has a capacity and tendency to cause the purchasing public to believe that such rugs are in fact true Oriental rugs in all respects, made in the Orient by hand.

PAR. 8. In the course and conduct of its business and for the purpose of inducing the purchase of certain of its rugs, respondent has engaged in the practice of representing that its rugs are "Oriental reproductions" or "authentic Oriental reproductions." Such representations are made by means of labels firmly attached by respondent to said rugs and which are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers.

In truth and in fact said rugs are not exact copies or reproductions of true Orientals in structure or method of manufacture but merely simulate them in appearance. While in some instances respondent has endeavored to copy the designs of typical, particular Oriental rugs, in others it has used designs which it has created and which are adaptations or combinations of Oriental motifs.

PAR. 9. The use by the respondent of the designations and representations as set forth herein in connection with the offering for sale, sale, and distribution of its rugs has had, and now has, the tendency and capacity to confuse and mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct and that the rugs so designated and represented are true or genuine Oriental rugs and to induce them to purchase said rugs on account thereof. The aforesaid acts and practices of the respondent have the effect of placing in the hands of retail dealers who purchase said rugs and resell them to the purchasing public, means and instrumentalities whereby they may mislead and deceive the purchasing public in the particulars aforesaid.

As a result of said acts and practices, trade has been unfairly diverted to the respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, answer of the respondent, testimony, and other evidence 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, 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, Marshall Field & Co., a corporation, trading and doing business under the name Karastan Rug Mills, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of rugs in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Karashah," "Kara Kirman," "Karavere," or "Kharol," or any other word or combination of words or syllables, coined or otherwise, which are indicative of the Orient, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of Oriental rugs.

2. Using the word "Kirman" or any other name of any genuine Oriental rug in combination with other words or syllables, coined or otherwise, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of the particular Oriental rugs indicated by the use of such name.

3. Using the word "Karashah" or any other word or combination of words or syllables the spelling, sound, or written appearance of which closely simulates or suggests the name of a genuine Oriental rug, to designate or describe rugs which are not in fact made in the Orient

Order

36 F. T. C.

and which do not possess all the essential characteristics and structure of the particular Oriental rugs indicated by the use of such name.

4. Using the word "reproduction" or any other word of similar import or meaning to designate or describe rugs which are not in fact reproductions of genuine Oriental rugs in all respects, including structure, method of manufacture, and material.

It is further ordered, That no provision of this order to cease and desist shall be construed as prohibiting the respondent from using the term "Karastan" to designate or describe its rugs, provided there is used in immediate connection or conjunction therewith a statement which clearly and conspicuously states in appropriate terms that the rugs so designated and described are woven on power looms in the United States.

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

Syllabus

IN THE MATTER OF

JOHN F. ERDLEY, DOING BUSINESS AS ERDLEY HATCHERIES, AND MONTGOMERY WARD & COMPANY

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

Docket 4696. Complaint, Feb. 4, 1942—Decision, Mar. 27, 1943

Where an individual, engaged in hatching and interstate sale and distribution of baby chicks; through advertisements in circulars and other printed matter, directly or by implication—

- (a) Represented by such statements as "Members of—The Colorado U. S. Poultry Improvement Ass'n.," that he was a member of such an organization, and that baby chicks offered and sold by him were hatched in a hatchery approved by the United States Government;

The facts being there was no such association; the Colorado Poultry Improvement Association, of which he was a member, was not a State agency and had no official connection with the "National Poultry Improvement Plan" of the U. S. Department of Agriculture, administered in the State concerned by the Colorado Poultry Improvement Board; use of letters "U. S." in connection with aforesaid words induced false belief that he was a member of the Board referred to and was participating in the National Poultry Improvement Plan; and his hatchery was not approved by the Government;

- (b) Falsely represented that his said baby chicks were hatched from eggs produced by a flock approved by the Government; that his chicks were "check tested," and that chicks from each parent flock were brooder tested for health and livability; and

Where a corporation engaged in interstate sale and distribution of various lines of merchandise, including baby chicks purchased by it from various hatcheries, including those of aforesaid individual; through advertising folders, pamphlets, catalogs, and otherwise, including certificates which it distributed through the various hatcheries with which it held contracts—

- (c) Represented that its baby chicks were from flocks approved by the United States Government and were hatched in hatcheries approved by the United States Government;

The facts being that such representations, insofar as they applied to baby chicks distributed for the corporation by aforesaid individual, upon whom it relied for information, were false and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said baby chicks, thereby inducing its purchase thereof, because of such mistaken belief:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Complaint

30 F. T. C.

Mr. L. E. Oliphant and Mr. Francis Pitman Keiper, 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 John F. Erdley, an individual, trading as Erdley Hatcheries, and Montgomery Ward & Co., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John F. Erdley, is an individual, trading and doing business as Erdley Hatcheries, with his office and principal place of business located at Wray, Colo.

Respondent, Montgomery Ward & 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 in Chicago, Ill.

PAR. 2. Respondent, John F. Erdley, trading as Erdley Hatcheries, is now and for more than 2 years last past has been engaged in the business of hatching and selling baby chicks. Respondent causes said baby chicks when sold by him to be transported from his aforesaid place of business in the State of Colorado to purchasers located in the various other States of the United States and in the District of Columbia.

PAR. 3. Respondent, Montgomery Ward & Co., is now and for more than 2 years last past has been engaged in the sale and distribution of various lines of merchandise, including baby chicks. Respondent, Montgomery Ward & Co., in connection with the operation of its aforesaid business, makes contracts with hatcheries located in various States of the United States for the purchase of baby chicks and the shipment of the same for the account of Montgomery Ward & Co. to its customers located in various States of the United States other than the States from which the shipments are made. Among such hatcheries with which said respondent had contracts was that of respondent, John F. Erdley.

The respondents maintain and at all times mentioned herein have maintained a course of trade in their said baby chicks in commerce among and between the various States of the United States and in the District of Columbia.

The respondents, Montgomery Ward & Co., and John F. Erdley, have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 4. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his baby chicks, the respondent, John F. Erdley, circulated and is now circulating among prospective purchasers throughout the United States by United States mails, advertisements, in newspapers and trade journals, by means of advertising folders, pamphlets, circular letters, and by other advertising material, all of general circulation, many false statements and representations concerning his said baby chicks. Among and typical of such false statements and representations are the following:

THE ERDLEY HATCHERIES, *Wray, Colorado.*

Members of THE COLORADO U. S. POULTRY IMPROVEMENT ASS'N.

This is to certify that ----- AAA Chicks Shipped * * *
Were hatched in a U. S. APPROVED HATCHERY from eggs of a U. S. APPROVED FLOCK, Our Flock No. ----- that Males mated with this flock are wing-banded males from RECORD OF PERFORMANCE FLOCKS and from Dams with records of 200 or more eggs per year.

WHITE LEGHORNS

Our ROYAL "AAA" chicks are from well selected high producing hens, mated with wing-banded PEDIGREED ROP cockerels of 256 to 285 egg production records.

Check Testing

As a check test of the field work, samples of chicks from each flock are regularly tested and observed for from two to four weeks. Sample chicks from each parent flock brooder tested for health and livability.

Through the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent, John F. Erdley, has represented directly or by implication that he is a member of the Colorado United States Poultry Improvement Association; that he is a United States record of performance poultry breeder, or that he operates a poultry plant or hatchery under the supervision of an official from the State agency supervising United States record of performance work in Colorado; that baby chicks offered for sale and sold by him are hatched in a hatchery inspected or approved by the United States Government from eggs produced by a flock inspected or approved by the United States Government; that eggs from which the said chicks were hatched were produced by a flock or flocks of chickens, the males of which consisted wholly of wing-banded males from record of performance flocks of 256 to 285

egg-production records; that his chicks have been "check-tested" and that chicks from each brooder flock were brooder tested for health and livability.

The Colorado United States Poultry Improvement Association was the designation of the official State agency for administering the United States Poultry Improvement Plan in Colorado, but such designation was changed in 1938 to the Colorado Poultry Improvement Board, which is now the official State agency administering such work in Colorado.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the respondent, John F. Erdley, is not and has not been a member of the Colorado United States Poultry Association; is not and has not been a United States record of performance poultry breeder and does not operate and has not operated a poultry breeding plant or hatchery under the supervision of an official for the State agency supervising United States record of performance work in Colorado. Baby chicks offered for sale and sold by him were not hatched in a hatchery approved by the United States Government or from eggs produced by a flock approved by the United States Government. Eggs from which the said chicks were hatched were not produced by a flock or flocks, the males of which consisted wholly of "wing-banded males from record of performance flocks." Respondent's said chicks were not adequately "check-tested" and sample chicks from each brooder flock were not brooder tested for health and livability.

PAR. 6. A United States record of performance breeder or hatchery is understood by members of the poultry industry to be and is one operating a poultry breeding plant or hatchery under the National Poultry Improvement Plan sponsored by the Bureau of Animal Industry of the United States Department of Agriculture, under a designated official State agency and conforming to standards established by the United States Department of Agriculture to improve poultry.

The term "United States Record of Performance" is used to designate, describe, and refer to poultry products produced under and conforming to the standards established by the United States Department of Agriculture under said National Poultry Improvement Plan.

PAR. 7. In the course and conduct of its business and for the purpose of inducing the purchase of its baby chicks, respondent, Montgomery Ward & Co., a corporation, has circulated and is now circulating among prospective customers throughout the United States, by United States mails and by means of advertising folders, pamphlets, catalogs, and other advertising matter, all of general circula-

tion, many false statements and representations concerning its said product, baby chicks. Among and typical of such false statements and representations are the following:

AAA QUALITY—R. O. P. Sired Chicks

From U. S. Approved Flocks—Carefully Selected and Leg-Banded.

From Flocks Mated with Cockerels from Record of Performance Dams.

Hatched in Special Numbered Trays in U. S. Approved Hatcheries.

Breeding Certificate Issued by Hatchery with all Orders for AAA Chicks.

Through the statements and representations hereinabove set forth and others similar thereto but not specifically set forth herein, respondent, Montgomery Ward & Co., has represented directly or by implication that baby chicks sold by it were United States record of performance sired chicks, from flocks approved by the United States Government and from flocks mated with cockerels from record of performance dams; that they were hatched in hatcheries approved by the United States Government.

PAR. 8. The foregoing representations are false and misleading. In truth and in fact, certain of said baby chicks sold by the respondent, Montgomery Ward & Co., were not United States record of performance sired chicks and were not from flocks approved by the United States Government or from flocks mated with cockerels from record of performance dams; they were not hatched in a hatchery approved by the United States Government.

Further, in the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its baby chicks, the respondent, Montgomery Ward & Co., a corporation, has issued and distributed a so-called "Ward's Certificate of Breeding" distributed to and among various hatcheries located throughout the United States with which it holds contracts to furnish baby chicks, which certificate is as follows:

CERTIFICATE OF BREEDING

This is to certify that-----

Quantity and brand

chicks shipped to----- on -----1942

Customer

were hatched in a U. S. APPROVED HATCHERY from eggs of a U. S. APPROVED FLOCK OR FLOCKS. Our No.----- That males mated with this flock were Wing banded males from RECORD OF PERFORMANCE FLOCKS and from dams with records of 200 or more eggs per year.

Signed-----

A hatchery man for Montgomery Ward.

The respondent, Montgomery Ward & Co., issued and distributed said certificates to respondent, John F. Erdley, who filled out the

Findings

36 F. T. C.

quantity and brand of chickens and name of the purchaser to whom chickens were shipped on account of Montgomery Ward & Co.

The chicks sold and shipped by respondent, John F. Erdley, on orders of respondent, Montgomery Ward & Co. were not hatched in a hatchery approved by the United States Government from eggs of a flock or flocks approved by the United States Government; males mated with said flock or flocks were not wing-banded males from record of performance flocks and from dams with records of 200 or more eggs per year.

PAR. 9. The use by the respondents of the foregoing false and misleading advertising disseminated as aforesaid has a tendency and capacity to and did and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such sales advertisements are and were true and does and did induce the purchasing public to buy substantial quantities of respondent's baby chicks as a result of such erroneous belief so engendered.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices, contrary to the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 4, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, John F. Erdley, an individual trading as Erdley Hatcheries, and Montgomery Ward & Co., 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 an answer by respondent, John F. Erdley (no answer was filed by respondent, Montgomery Ward & Co.), testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced 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 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, John F. Erdley, is an individual, trading and doing business as Erdley Hatcheries, with his office and principal place of business located at Wray, Colo. Respondent, Montgomery Ward & 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 in Chicago, Ill.

PAR. 2. Respondent, John F. Erdley, is now and for a number of years last past, has been engaged in the business of hatching and selling baby chicks. He causes and has caused his baby chicks, when sold, to be transported from his place of business in the State of Colorado to purchasers thereof located in various other States of the United States.

Respondent, Montgomery Ward & Co., is now and for a number of years last past, has been engaged in the sale and distribution of various lines of merchandise, including baby chicks. In connection with the operation of its business, Montgomery Ward & Co. enters into contracts with hatcheries located in various sections of the United States, such contracts providing for the purchase by it of baby chicks from the various hatcheries and for the shipment by the hatcheries of the baby chicks to the customers of Montgomery Ward & Co. for its account. Such customers are frequently located in States of the United States other than the State in which the shipment originates. Among the hatcheries with which Montgomery Ward & Co. has had such contracts was that of respondent, John F. Erdley.

Both of the respondents maintain and have maintained a course of trade in baby chicks in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business respondent, John F. Erdley, has advertised his baby chicks in various ways, including the distribution among prospective purchasers of advertising circulars and other printed material. Among and typical of the various statements and representations which have appeared in such advertisements are the following:

Members of THE COLORADO U. S. POULTRY IMPROVEMENT ASS'N.

Check Testing

As a check test of the field work, samples of chicks from each flock are regularly tested and observed for from two to four weeks. Sample chicks from each parent flock brooder tested for health and livability.

Respondent, Erdley, has also issued and delivered to certain purchasers of his baby chicks a "Certificate of Breeding," which reads in part as follows:

This is to certify that (number and description) AAA Chicks Shipped to (name of purchaser) were hatched in a U. S. APPROVED HATCHERY from eggs of a U. S. APPROVED FLOCK, Our Flock No. (number).

Through the use of these statements and representations, and others of a similar nature, respondent, Erdley, represented, directly or by implication, that he was a member of the "Colorado U. S. Poultry Improvement Association"; that baby chicks offered for sale and sold by him were hatched in a hatchery approved by the United States Government, and that such baby chicks were hatched from eggs produced by a flock approved by the United States Government; that his chicks were "check tested," and that chicks from each parent flock were brooder tested for health and livability.

PAR. 4. For a number of years, a program known as the "National Poultry Improvement Plan" has been sponsored by the Bureau of Animal Industry of the United States Department of Agriculture, such program having as its objectives the improvement of the breeding and production qualities of poultry and the reduction of losses from certain diseases. The program is administered by official State agencies in the various States, the official agency in Colorado being the Colorado Poultry Improvement Board. While there exists in Colorado a trade association known as the "Colorado Poultry Improvement Association" (of which respondent Erdley is a member), this association is not a State agency and has no official connection with the administering of the National Poultry Improvement Plan. There is no such organization as the "Colorado U. S. Poultry Improvement Association" referred to in respondent Erdley's advertising. The use by respondent Erdley of the Letters "U. S." in connection with the words "Colorado Poultry Improvement Association" induced the belief among poultrymen that respondent was a member of the Colorado Poultry Improvement Board and was participating in the National Poultry Improvement Plan.

PAR. 5. The Commission finds that respondent Erdley's representations were misleading and deceptive. While respondent, Erdley, subsequently became a member of the Colorado Poultry Improvement Board, he was not a member of such organization at the time the foregoing representations were made and was not participating in the National Poultry Improvement Plan. His hatchery was not approved by the United States Government, nor were his baby chicks hatched from eggs produced by a flock approved by the United States Government. His chicks were not adequately "check tested," nor were sample chicks from each parent flock brooder tested for health and livability.

PAR. 6. Respondent, Montgomery Ward & Co., in the course and conduct of its business, and for the purpose of inducing the purchase of its baby chicks, has circulated among prospective purchasers advertising folders, pamphlets, catalogs, and other statements and representations, the following:

From U. S. Approved Flocks.

Hatched in Special Numbered Trays in U. S.

Approved Hatcheries.

The company also issued and distributed, through the various hatcheries with which it held contracts, a certificate designated "Ward's Certificate of Breeding." This certificate represented, among other things, that the baby chicks therein referred to "were hatched in a U. S. Approved Hatchery from eggs of a U. S. Approved Flock."

Through the use of these statements and representations, and others of a similar nature, respondent, Montgomery Ward & Co., represented that its baby chicks were from flocks approved by the United States Government and were hatched in hatcheries approved by the United States Government. As heretofore pointed out, these representations were misleading and deceptive insofar as they applied to baby chicks distributed for the company by respondent, Erdley.

The evidence shows that in making these representations Montgomery Ward & Co. was relying upon information supplied to it by respondent, Erdley, and that after the Commission's investigation was instituted and the company ascertained that its information was incorrect, it discontinued the purchase of baby chicks from respondent, Erdley.

PAR. 7. The use by the respondents of the misleading and deceptive representations set forth herein had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' baby chicks, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' baby chicks 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 respondent,

Order

36 F. T. C.

John F. Erdley (no answer having been filed by respondent, Montgomery Ward & Co.), 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 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 respondent, John F. Erdley, individually, and trading as Erdley Hatcheries, 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 baby chicks in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent is a member of the Colorado Poultry Improvement Board, or is participating in the National Poultry Improvement Plan, when such is not the fact.

2. That respondent's hatchery is approved by the United States Government, or that respondent's baby chicks are hatched from eggs produced by a flock approved by the United States Government, when such is not the fact.

3. That respondent's baby chicks are "check tested," unless adequate check tests are in fact made.

4. That chicks from each of respondent's parent flocks are brooder tested for health and livability, when such is not the fact.

It is further ordered, That respondent, Montgomery Ward & 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 baby chicks 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 baby chicks are from flocks approved by the United States Government, or that they are hatched in hatcheries approved by the United States Government, which such is not the fact.

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

SYLLABUS

IN THE MATTER OF
WALTER KIDDE & 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 3866. Complaint, Aug. 7, 1939—Decision, Mar. 29, 1943

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of its "Lux" carbon dioxide fire-extinguishing apparatus, among other fire-fighting equipment—

- (a) Falsely represented in advertisements and sales promotion literature that it originated and pioneered the carbon dioxide method of fire-extinguishing, that every important development of carbon dioxide equipment and technique had been accomplished by its engineers, and that every basic improvement in every fire-extinguisher involving carbon dioxide on the market was a development of it;

The facts being that while its senior vice-president, as chief engineer, in 1924, conceived two major improvements in the original "Lux" system, said system involved a 1920 Swedish patent directed to one of the most difficult problems in the mechanics concerned with the use of carbon dioxide as a fire extinguisher, right to use of which, along with trade name "Lux" it acquired under license arrangements with Swedish company owner in 1923; and it acquired in 1929 and 1930, following declarations of interference by the Patent Office—and notwithstanding earlier work by it or by its employee, having to do with pressure operated fluid release devices, and a discharge to produce a denser and wider coverage and concentration, without knowledge, as contended, of competitor's patents or developments—patent rights and applications relating thereto through licensing agreements and through acquisition of all the assets and business of a company to which particular invention had been assigned;

- (b) Represented that its carbon dioxide fire extinguishers had "108 extra values or features" which could not be obtained in its competitors' fire extinguishers, through distributing booklets which contained illustrations and representations relative to its said "Lux" extinguisher, and on the cover of which appeared the statement "108 Extra Values";

The facts being that by virtue of license agreements with certain competitors, the inventions covered by the patents referred to were used by them; and the majority of the features referred to in said booklet were not exceptional to its product but were to be found also in those of its competitors;

- (c) Represented, as typical exclusive features of its said "Lux" extinguisher, that its cylinders were drawn from plates instead of billets so that flow lines of the grain follow the contour of the cylinders; were made with spherical bottoms and domes, thus providing the greatest strength with the least weight; and were subjected to controlled heat treatment and tempering to produce uniform strength;

The facts being that fire-extinguishing apparatus of competitors were also drawn from plates and made with spherical bottoms and domes, and all manufacturers subjected such apparatus to controlled heat treatment and

Complaint

36 F. T. C.

tempering, to produce cylinders of uniform strength, as required under regulations of the Interstate Commerce Commission;

- (d) Represented that the valves of its extinguishers were fitted with recoil preventers;

The facts being that during the year 1936, and prior thereto, the recoil preventer was being used by its competitors, although covered by reissue patent issued to it in 1933;

- (e) Represented, as aforesaid that all Lux discharge horns used nozzles with orifices of the patented Jones design, which was the only nozzle that operated perfectly under all temperature conditions and permitted lengthly discharge at low temperatures without freezing, and that discharge horns on all Lux portable extinguishers were nonconductors of electricity as the soft rubber grip on the horn covered all metal parts;

The facts being that after March 31, 1936, the nozzle equipment on its apparatus was not of the "Jones" design, but a nozzle of said design was then and since had been used by its competitors, and during said year and theretofore, the soft rubber grips were also an accompaniment of the apparatus of a competitor;

- (f) Represented, as aforesaid, that no fire-extinguishing apparatus, device, or equipment other than its own would put out airplane fires both on the ground and during flight, and that its equipment was the only fire-extinguishing equipment for airplane-engine fires approved by the United States Army and Navy;

The facts being that equipment of a certain competitor had been approved by the Army and Navy since 1935 as apparatus which would extinguish such fires both on the ground and during flight; and

- (g) Falsely disparaged competitors and the merit of competing products through letters sent to prospective purchasers containing such typical misrepresentations as that the fire-extinguishing equipment of a certain competitor had been in existence for only two years, with the result that said competitor was still having difficulty with problems that it, itself, encountered and overcame eight or ten years before; and that its competitors did not carry a supply of parts for emergency use in either Chicago or St. Louis;

The facts being that competitor referred to had been in existence since 1925, and during the year 1936, and prior thereto, had a direct factory warehouse branch, and salesmen operating under its Chicago district manager, and its branch warehouses carried a substantial stock of extinguishers and parts;

With effect of misleading and deceiving prospective purchasers into the false belief that said representations were true, thereby causing them to purchase said fire-extinguishing apparatus; whereby trade was diverted unfairly to it from competitors so engaged:

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

Mr. R. P. Bellinger for the Commission.

Colladay, Colladay & Wallace, 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 Walter Kidde & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Walter Kidde & Co., Inc., is a corporation, doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 140 Cedar Street, in the city of New York of said State, and with a factory located in the city of Bloomfield, State of New Jersey. Said respondent now is, and for several years last past has been, engaged in the business of manufacturing, offering for sale, and selling a line of fire-fighting and fire-extinguishing equipment, including carbon dioxide fire-extinguishing apparatus having the trade name "Lux," in commerce among and between the various States of the United States and in the District of Columbia and among and between the United States and foreign countries.

In the course and conduct of its aforesaid business respondent now causes, and has caused, said products, when sold or ordered, to be shipped and transported from its aforesaid places of business to purchasers located in States other than the States of New York and New Jersey, and to purchasers located in the District of Columbia and in foreign countries. At all times herein mentioned, respondent has maintained a course of trade in said products in said commerce and has been and now is in competition with other corporations, firms, partnerships, and individuals engaged in the business of offering for sale and selling fire-fighting and fire-extinguishing equipment and apparatus in said commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, and in soliciting the sale of and selling its products, more particularly its carbon dioxide fire-extinguishing apparatus, respondent caused certain advertisements and sales promotion literature to be distributed and circulated to and among purchasers and prospective purchasers of said products in and throughout the various States of the United States, and in the District of Columbia and foreign countries, in which there appeared statements and representations, of which the following, among others, are typical.

Every important development of carbon dioxide equipment and technique has been accomplished by LUX engineers.

LUX engineers developed carbon dioxide fire extinguishing. They have specialized in its application for fifteen years. They are responsible for every worthwhile improvement made in carbon dioxide extinguishers.

The same engineering ability that conceived and pioneered the carbon dioxide method of fire extinguishment is still on the job, keeping Lux years ahead of competition. Not only was this method of fighting fires developed by Kidde engineers in the face of stiff competition from our present competitors and licensees, both were then recommending other types as being inferior to gas, but every basic improvement and every single model (carbon dioxide) now on the market is a Kidde development. In contrast, the experience of our competitors had been entirely with carbon tetrachloride and foam equipment.

For 200 years, carbon dioxide has been known as a fire extinguisher. Walter Kidde & Company developed the secret of success—the secret of getting liquified carbon dioxide out of the cylinder quickly—without freezing.

Each LUX installation is designed by the manufacturer who developed carbon dioxide protection.

The mechanical advantages of Lux extinguishers outlined in this book are fully protected by patents, many of which have been successfully litigated. The background of experience incorporated in Lux extinguishers is an exclusive Lux possession that cannot be copied.

The aforesaid statements and representations were and are false and misleading and an unfair disparagement of respondent's competitors and their products in that the same imply and represent that the engineering and technical staff of respondent alone were and are responsible for the invention and successful adaptation of carbon dioxide to the extinguishment of fires and for every important development and improvement in carbon dioxide equipment for the extinguishment of fires, and that all the products of such development are the exclusive possessions of respondent, whereas such are not the facts. The successful adaptation of carbon dioxide to the extinguishment of fires and the invention of equipment therefor was first accomplished by engineers, inventors, patentees, and persons at no time in the employ of respondent and having no connection with respondent. Numerous inventions, developments, and important improvements of such type of equipment have been made and patented by others than respondent and by others not in the employ of respondent, and a substantial number of such inventions and improvements have been and are used by respondent by virtue of licenses from competitors and others not otherwise connected with respondent. The said implications and representations were and are further false and misleading for the reason that a substantial number of the inventions and mechanical advantages of respondent's Lux fire extinguishers were and are used and open to use by competitors under licenses therefor granted by respondent.

PAR. 3. Among the advertising and sales promotion literature used and circulated by respondent, as aforesaid, certain undated catalogs or booklets containing illustrations, statements, and representations

relative to respondent's carbon dioxide fire extinguisher, designated as "Lux," carried on the cover thereof the statement, "108 EXTRA VALUES." Of the 108 separate value items therein listed and referred to, many are further stated and represented to be "An Exclusive LUX feature," the said statement being printed after an asterisk at the bottom of each page of said catalogs or booklets. Typical of said values referred to and represented as "extra values" and as "exclusive LUX features" are the following, among others:

Lux cylinders are drawn from plates instead of billets.

Every Lux cylinder is hydraulically tested at 3000 lbs. pressure. Lux cylinders not only meet, but exceed, I. C. C. requirements.

Locking pins, having a spring tension, hold Lux valves shut against vibration.

Lux valves are fitted with a patented recoil preventer.

The Lux recoil preventer has no moving parts, does not restrict the gas flow, and cannot be accidentally removed.

Soft rubber grip on the horn covers all metal parts.

Each Lux cylinder is equipped with a rotary cutter valve * * * The cutter valve cuts out the sealing disc completely so that there is no obstruction left in the path of the gas to restrict its flow and cause freezing.

Lux screening nozzles are used to prevent entrainment of wear through doors and windows that cannot be closed. They produce the only effective gas curtain.

Special Lux electrically driven carbon dioxide recharging units.

The foregoing statements imply and represent that the items or values listed as "extra values" are each and all values which are peculiar and limited to respondent's product and not available in the products of respondent's competitors, and that said values are "extra" and not normally to be had in carbon dioxide fire extinguishers. The said implication and representation is not offset by specific reference to certain items or values as "exclusive Lux features," but insofar as reference is made to certain items or values as being "exclusive Lux features," the said statements imply and represent that all the items or values so referred to are peculiar and limited to respondent's product only, that none of them are available in the products of respondent's competitors, and that the same are "extra" and not normally to be had in carbon dioxide fire extinguishers. The said implications and representations are false and misleading in that most of the items or values referred to in said catalogs or booklets are essential to and normally to be found in carbon dioxide fire extinguishers and are not "extra," and most of said items or values are not peculiar or limited to respondent's product as distinguished from the products of certain competitors. There are, and were at the time said statements were made, and during the time the said catalogs or booklets were in use, competitors of respondent who made and offered for sale and sold carbon dioxide fire extinguishers having the items or values listed and referred to in said catalogs or booklets.

Other statements made in said catalogs or booklets falsely and misleadingly representing items or values to be "EXTRA VALUES" and "exclusive Lux features," were and are as follows:

The new oval-shaped horn on Lux extinguishers gives a discharge having 10 to 15% longer range than the old-fashioned round horn.

All Lux discharge horns use nozzles with orifices of the patented Jones design * * * It operates at 30 degrees lower temperature than any other type of nozzle.

The aforesaid statements and representations are false and misleading for the reason that the Lux extinguisher's oval-shaped horn referred to, at the time said statements and representations were made and in use, did not give a 10 percent to 15 percent longer range than a round horn, and the Jones design nozzle did not operate at 30 degrees lower temperature than any or all other types of nozzle.

Further items or values, among others, referred to and falsely and misleadingly represented in said catalogs or booklets as "exclusive Lux features," are the following:

One pull on the control of the Lux airplane fire extinguisher puts out the most severe fire that can occur about the engine of an airplane. No other device puts out fires both on the ground and during flight.

The Lux airplane fire extinguisher is the only device of any type approved by the Underwriters' Laboratories for protection against airplane engine fires.

The Lux extinguisher is the only extinguisher for airplane engine fires approved by the U. S. Navy and Army.

The aforesaid statements and representations are false and misleading for the reason that a similar airplane fire-extinguishing system that puts out fires both on the ground and during flight was and is offered for sale by a competitor, and competing fire extinguishers were and are approved by the Underwriters' Laboratories, and by the United States Navy and the United States Army for protection against airplane engine fires.

PAR. 4. In the further course and conduct of respondent's aforesaid business, by means of letters written and sent through the mails to prospective purchasers, respondent has falsely, misleadingly, and unfairly represented and disparaged competitors and the merit of competing products. Demonstrative of said representations and disparagement by respondent are the following statements:

The C-O-Two units have been in existence only about two years, with the result that they are still having difficulty overcoming problems that Kidde encountered and overcame 8 or 10 years ago.

Neither of our competitors have a local engineer available, nor do they carry a supply of parts for emergency use either in Chicago or St. Louis.

The aforesaid representations were and are false and misleading and an unfair disparagement of respondent's competitors and competing

products, particularly the product of the C-O-Two Company, in that the C-O-Two product had been in existence more than two years, said competitor was having no difficulties which respondent had previously overcome, and the said competitor had a direct factory warehouse branch and was equipped for emergency purposes at warehouses in the city of Chicago, Ill.

PAR. 5. The use by respondent of the aforesaid false, misleading and disparaging statements and representations has had and now has the capacity and tendency to mislead and deceive purchasers and prospective purchasers of fire-extinguishing equipment and apparatus into the false and erroneous belief that said statements and representations were and are true, and to cause them to purchase said products in reliance upon such erroneous belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on Aug. 7, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Walter Kidde & Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by Colladay, Colladay & Wallace, 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 without presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Walter Kidde & Co., Inc., is a corporation, doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 140 Cedar Street in the city of New York, State of New York, and with a factory located in the city of Bloomfield, State of New Jersey. Said respondent is now, and for several years last past has been, engaged in the business of manufacturing, offering for sale, and selling a line of fire-fighting and fire-extinguishing equipment, including carbon-dioxide fire-extinguishing apparatus having the trade name "Lux," in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent has been continuously in business since its organization in 1917 and is a general contractor, as well as a manufacturer and seller of fire-extinguishing apparatus. Its carbon dioxide fire-extinguishing apparatuses are manufactured by respondent at its factory in Bloomfield, N. J.

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

PAR. 3. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the sale and distribution of fire-extinguishing equipment and apparatus in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and in soliciting the sale of and selling its products, particularly its carbon dioxide fire-extinguishing apparatus, respondent at various times and intervals from 1934 to 1937, inclusive, caused certain advertisements and sales promotion literature to be distributed and circulated to and among purchasers and prospective purchasers of said products in and throughout the various States of the United States, in which there appeared various false, misleading, and deceptive statements and representations, of which the following, among others, are typical:

1. That the respondent originated and pioneered the carbon dioxide method of fire extinguishing and that every important development of carbon dioxide equipment and technique has been accomplished by respondent's engineers.

2. That every basic improvement and every fire extinguisher involving carbon dioxide now on the market is a development of the respondent.

PAR. 5. Among the advertising and sales promotion literature used and circulated by respondent as aforesaid were certain undated catalogs or booklets containing illustrations, statements, and representations relative to respondent's carbon-dioxide fire extinguishers designated as "Lux," which booklets carried on the cover thereof the statement "108 EXTRA VALUES." The booklet so designated contains 108 numbered paragraphs describing various features of respondent's Lux extinguishers. By this means the respondent has represented that its carbon-dioxide fire extinguishers have 108 extra values or features which cannot be obtained in fire extinguishers sold and distributed by its competitors. In addition to this representation, the respondent has designated certain of these items as being exclusive features of the Lux fire extinguisher. Typical of some of the items referred to as such exclusive features are the following: .

1. That respondent's cylinders are drawn from plates instead of billets so that flow lines of the grain follow the contour of the cylinders.

2. That respondent's cylinders are made with spherical bottoms and domes, which shape provides the greatest strength with the least weight.

3. That respondent's cylinders are subjected to controlled heat treatment and tempering to produce uniform strength.

4. That the valves of respondent's extinguishers are fitted with recoil preventers.

5. That all Lux discharge horns use nozzles with orifices of the patented Jones design, which is the only nozzle that operates perfectly under all temperature conditions and permits lengthy discharge at low temperatures without freezing.

6. That discharge horns on all Lux portable extinguishers are nonconductors of electricity as the soft rubber grip on the horn covers all metal parts.

7. That no fire-extinguishing apparatus, device, or equipment other than the respondent's will put out airplane fires both on the ground and during flight.

8. That respondent's equipment is the only fire-extinguishing equipment for airplane-engine fires approved by the United States Army and Navy.

PAR. 6. In addition to the above false and deceptive statements and representations, the respondent has also, by means of letters written and sent through the mails to prospective purchasers, falsely, misleadingly, and unfairly misrepresented and disparaged competitors and the merit of competing products. Typical of such disparaging statements and representations are the following:

1. That the fire-extinguishing equipment of the C-O-Two Fire Equipment Company, one of its competitors, has been in existence for only two years, with the result that it is still having difficulty overcoming problems that the respondent encountered and overcame eight or ten years ago.

Findings

36 F. T. C.

2. That respondent's competitors do not carry a supply of parts for emergency use in either Chicago or St. Louis.

PAR. 7. The respondent discontinued practically all the advertising representations hereinabove referred to after its attention was directed to the objectionable features by the investigation of the case by the Federal Trade Commission and are not now being used by the respondent.

PAR. 8. The foregoing statements and representations appearing in respondent's various advertising, its booklets, and various correspondence as hereinbefore described are grossly exaggerated, false, and misleading. Respondent has not originated or pioneered the carbon-dioxide method of fire extinguishing and has not developed every important improvement in carbon-dioxide equipment and technique. Carbon dioxide fire-extinguishing apparatuses are filled with carbon-dioxide gas and liquid carbon dioxide. A pipe extends from the release valve into the cylinder containing the gas and liquid. When the valve is opened the pressure of the gas in the cylinder or container forces the liquid carbon dioxide through this piping. At the time the liquid enters the discharge nozzle and contacts the air, it expands, and as it reaches the end of the nozzle, refrigeration commences and the liquid expands into the air in the form of carbon dioxide "snow." This snow absorbs heat rapidly and in so doing reduces the oxygen content of the air to such an extent that there is not enough oxygen to support combustion. The result, in effect, is suffocation and extinguishment of the fire to which the snow is applied.

PAR. 9. The practical development and use of carbon dioxide as a fire extinguisher involved problems in mechanics. The first and most difficult of these problems was to secure discharge from the container without freezing at the point of discharge with its consequent prevention of further discharge. The invention of Franz Johan Henrik Rustige, a Swedish engineer, was designed to accomplish this result. At that time Rustige was chief engineer of Aktiebolaget Lux Company of Stockholm, Sweden, and Patent No. 1,335,394, covering said invention, was issued to said company on March 30, 1920. The said inventor has never been in the employment of the respondent herein; but in 1923 license arrangements were consummated with the aforesaid Swedish company, whereby respondent acquired the right to use the aforesaid patent and invention. Since that time respondent has used said invention and the word "Lux" as a trade name for its carbon dioxide fire extinguishers. Respondent has at no time acquired the assets and business of the aforesaid Swedish Lux Co. nor become successor thereto. Respondent, however, did acquire the Swedish Lux

Co.'s entire right, title, and interest in the use of the name "Lux" in connection with all business (excepting only Norwegian), relating to the employment of carbonic acid in the extinguishing of fires.

The Lux System as marketed by Aktiebolaget Lux Co. was very primitive by comparison with the present product of respondent, and had only a limited application in extinguishing fires. In January and February, 1924, respondent's chief engineer (now its senior vice president), through the exercise of inventive faculties, conceived two major improvements in the original Lux System, namely, a means for discharging carbon dioxide in large quantities without danger of freezing and a method of gang releasing a plurality of containers of carbon dioxide for rapid and simultaneous discharge. These two inventions greatly expanded the use of the original Lux System of carbon-dioxide fire extinguishing, and form, to a large extent, the basis of present day carbon dioxide fire-extinguishing methods.

PAR. 10. Respondent began its development work on pressure operated fluid release devices in 1925 and 1926. Respondent contends that it had no knowledge of any patents of C-O-Two Fire Equipment Co. relating to pressure operation of fluid release devices until declarations of interferences by the Patent Office on April 18, 1930, and July 3, 1930, but in order to continue its use of pressure operated apparatus, respondent, on December 12, 1930, entered into a licensing agreement with C-O-Two Fire Equipment Co., a California corporation and competitor of respondent, whereby respondent was licensed to, and did, employ and use said inventions and patent rights and applications for patents owned by C-O-Two Fire Equipment Co. The patents and applications for patents referred to in said licensing agreement relate to the art of fire extinguishing with the use of carbon dioxide and include important inventions relating to fluid pressure control of carbon-dioxide cylinders and appurtenances for use in connection therewith.

On December 12, 1930, a settlement agreement was entered into by and between C-O-Two Fire Equipment Co., a California corporation, competitor of respondent, and Walter Kidde & Co., Inc., respondent herein, whereby there was settled in favor of said C-O-Two Fire Equipment Co. certain important U. S. Patent Office interferences between applications of C-O-Two Fire Extinguishing Co. covering important features of the C-O-Two Fire Extinguishing Co.'s carbon-dioxide systems, and under which the respondent sought and obtained a license under the agreement of December 12, 1930, above referred to.

PAR. 11. Another important problem in the development of carbon-dioxide fire extinguishers was solved by the invention of a discharge horn or nozzle which produces a denser and wider coverage and concen-

Findings

36 F. T. C.

tration of the snow at the end of the discharged stream. The inventor, Henry R. Minor, was never in respondent's employ, but, at the time of said invention, was an engineer and employee of General Carbonic Co., a manufacturer of carbonic acid gas, which was co-operating with respondent in 1923 and 1924 by permitting respondent to conduct experiments at General Carbonic Co.'s plant in Long Island City, with the idea of increasing its sales of gas. The record shows that Minor applied for a patent on his invention on Sept. 26, 1925, that he assigned his invention to General Carbonic Co., and that the latter company assigned the invention to Fyre-Freez Corporation in 1927. On or about July 1, 1929, respondent by purchase acquired all of the assets and business of the said Fyre-Freez Corporation, including the ownership of the said Minor application. Patent No. 1,760,274, based on said Minor application, was issued to respondent in 1930.

The Minor U. S. Patent 1,760,274 was acquired following an interference declared between the application of Minor and an application of one of respondent's employees, George Crosby Hiss, to whom U. S. Patent 1,760,359 was issued. The work of Hiss began in the spring of 1923, while Minor's work had started about 6 months earlier, and, it is respondent's contention that Minor's developments and achievement were wholly unknown to Hiss until the aforesaid interference proceedings in May 1929. Respondent's development of the form of portable extinguisher discharge horn, which is still in use, was completed about 1 year before the interference was filed in May 1929.

PAR. 12. During the year 1936, and for approximately 5 years prior thereto, and at present, the inventions covered by the aforesaid Patents No. 1,335,394 and No. 1,760,274 have been and are used by respondent's competitors C-O-Two Fire Equipment Co. and American LaFrance & Foamite Corporation by virtue of license agreements between respondent and said competitors.

PAR. 13. The word "extra" as used by respondent in its advertising booklets bearing the statement "108 EXTRA VALUES," both by dictionary definition and as understood by the purchasing public, means and signifies something beyond that which is due, usual, necessary, or to be expected. The statement "108 EXTRA VALUES" has the tendency and capacity to induce in the minds of prospective purchasers of carbon-dioxide fire extinguishers the erroneous belief that the values or features referred to were and are extra and in addition to or beyond those which were or are due, usual, necessary, or to be expected or found in carbon-dioxide fire-extinguishing apparatus. As a matter of fact, as of the time said booklets were in

circulation, the majority of the values or features referred to were and are usual or necessary accompaniments of carbon-dioxide fire-extinguishing apparatus, and the same were and are not exceptional to respondent's product, but were and are to be found in the products of respondent's competitors.

PAR. 14. The exclusive features claimed by the respondent for its carbon-dioxide fire extinguishers as hereinbefore set out, were not in fact peculiar to respondent's apparatus but, instead, appear in extinguishers sold by respondent's competitors. The cylinders of the carbon dioxide fire-extinguishing apparatus of respondent's competitor C-O-Two Fire Equipment Co. were also drawn from plates instead of billets. The fire-extinguishing apparatus of respondent's competitor American LaFrance & Foamite Corporation was made with spherical bottoms and domes. 1,100 cylinders of this type were sold by said competitor to the United States Navy Department on or about Sept. 16, 1936. All manufacturers of carbon dioxide fire-extinguishing apparatus subjected their cylinders to controlled heat treatment and tempering producing cylinders of uniform strength and as required under regulations of the Interstate Commerce Commission. During the year 1936, and prior thereto, the "recoil preventer" was being used by respondent's competitors, although covered by reissue Patent No. 18,839, issued to respondent May 23, 1933. From and after Mar. 31, 1936, the nozzle equipment on respondent's apparatus was not of the "Jones design," but a nozzle of said design was then, and since has been, used by respondent's competitors. During said year, and theretofore, the soft rubber grips on the discharge horn covering metal parts was also an accompaniment of the apparatus of respondent's competitor C-O-Two Fire Equipment Co. Respondent's fire-extinguishing equipment is not the only equipment which will put out airplane fires both on the ground and during flight, and respondent's equipment is not the only fire-extinguishing equipment for airplane fires approved by the United States Army and Navy. In fact, the fire-extinguishing apparatus of respondent's competitor Air Cruisers, Inc., has been approved by the United States Navy and Army since July 17, 1935, as fire-extinguishing apparatus which will extinguish airplane-engine fires both on the ground and during flight.

PAR. 15. Respondent's competitor C-O-Two Fire Equipment Co. has been in existence since the year 1925. During the year 1936, and prior thereto, said competitor had a direct factory warehouse branch and salesmen operating under its Chicago district manager, and at its said branch warehouses carried a substantial stock of extinguishers and parts.

Order

36 F. T. C.

PAR. 16. The use by the respondent of the aforesaid false, misleading, and disparaging statements and representations had the capacity and tendency to, and did, mislead and deceive purchasers and prospective purchasers of fire-extinguishing equipment and apparatus into the false and erroneous belief that said representations were true, and caused them to purchase respondent's products, thereby unfairly diverting trade to respondent from its competitors who are also engaged in the sale and distribution of fire-extinguishing equipment in commerce among and between the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein by its counsel, Colladay, Colladay & Wallace, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, which provides, among other things, that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Walter Kidde & Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fire-extinguishing equipment in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that the respondent originated or pioneered the carbon-dioxide method of fire extinguishing or that respondent has developed every important improvement in carbon-dioxide equipment and technique.

2. Representing directly or by implication that all fire-extinguishing equipment involving carbon dioxide and every basic improvement

thereof are developments of the respondent or that any extinguishing equipment or improvement thereof not originated and designed solely by the respondent is a development of the respondent.

3. Representing directly or by implication that any feature or value of respondent's fire-extinguishing equipment is an exceptional or exclusive feature of respondent's fire-extinguishing equipment either through the use of the term "extra values" or any other term of similar import or meaning to designate such features, or in any other manner, when such features so claimed to be exceptional or exclusive are in fact found in, and form a part of, fire-extinguishing equipment other than that sold by the respondent.

4. Representing directly or by implication that no fire-extinguishing apparatus, device, or equipment other than respondent's will put out airplane fires both on the ground and in flight.

5. Representing directly or by implication that respondent's equipment is the only fire-extinguishing apparatus approved by the United States Army or Navy as equipment for use in extinguishing airplane fires both on the ground and in flight.

6. Making or causing to be made in any form or manner any false or disparaging statements with reference to the length of time that any competitor has been in business or the length of time that any competitive equipment has been on the market.

7. Making or causing to be made in any form or manner any false or disparaging statements with reference to the ability of any competitor to supply parts for emergency use or representing that any competitor does not have warehouse facilities for supplying parts for emergency use when such warehouse facilities are in fact in existence.

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

A. & M. KARAGHEUSIAN, INC.

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

Docket 4305. Complaint, Sept. 6, 1940—Decision, Mar. 29, 1943

Where a corporation, with foreign offices in Tientsin, China, and throughout Persia, engaged in the domestic manufacture, importation, and competitive interstate distribution and sale of various rugs and carpets, which resembled in design, color, and general appearance genuine Orientals, and included as its leading and most expensive domestic line its "Gullistan" rugs, in the more recent labeling of which it more or less prominently displayed their American manufacture, and in the advertising of which it discussed its patented process and method employed therein—

- (a) Made use of words "Iranian" and "Hindustan" to designate certain rugs, the faces of which had many points of resemblance in design, color, and general appearance to the long esteemed, distinctive hand-built genuine Orientals, commonly designated by geographical or tribal names indicative of their Oriental origin, and thereby—withstanding labels which almost indiscernibly displayed the words "Made in U. S. A." or "An American product," and "Made by the makers of Gullistan,"—represented that its said products were true Orientals in every respect, made by hand in Persia (or Iran) or in India (or Hindustan);

When in fact said domestic products were woven by it on power looms; and, while "washed" to impart the desirable luster or sheen of the genuine Oriental, similarly acquired, they were not so woven that colors and patterns, as in the genuine, showed through, but had the hard or white back common to Wilton and Axminster manufacturing methods;

- (b) With capacity and tendency to cause purchasing public to believe that certain of its aforesaid "washed" domestic machine-made rugs, colors, and patterns of which showed through, and which, labeled as above described, had, as aforesaid, many other points similar to true Orientals, were such, made use, as designation thereof, of coined word "Mirastan," distinctive suffix of which it shared with names of such genuine Orientals as "Beluchistan," "Kurdistan," "Laristan," "Cabistan," and "Daghestan"; and
- (c) Made use of word "Reproduction" or "Reproductions" in advertising copy furnished by it to dealers in which were contained such statements as "Gullistan—the world famous Oriental reproductions that most people cannot tell from a hand woven Oriental rug"; "Superb Persian reproductions * * * Hindustan rugs"; "Persian reproductions * * * the Iranian rug"; "Mirastan Oriental reproductions * * * see Mirastan and compare it with the costliest Persian rugs. You will be amazed at the similarity";

The facts being that while some of such rugs followed as closely as possible in power-loom weaving the colors and patterns of original Orientals, they did not do so exactly, while others were adaptations and combinations of colors, motifs, and patterns found in genuine Orientals; the manufacture thereof did not involve the copying of the color and design of any particular single

genuine Oriental, but the designs as a whole were entirely new; and said products were not reproductions of Orientals in structure or method of manufacture but merely simulated the appearance thereof;

Tendency and capacity of which acts and practices were to confuse and mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations were true, and thus to induce them to purchase said rugs on account thereof, with effect of placing in the hands of retail dealers means to mislead and deceive the purchasing public in the particulars aforesaid, and of diverting trade unfairly to it from its competitors who truthfully represent their genuine Oriental and domestic products:

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

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

Mr. Randolph W. Branch for the Commission.

White & Case, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that A. & M. Karagheusian, 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, A. & M. Karagheusian, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, having an office and principal place of business at 295 Fifth Avenue, in the city and State of New York, and having manufacturing plants at Freehold and Roselle, in the State of New Jersey. Respondent also has foreign offices in Tientsin, China, and throughout Persia.

PAR. 2. Respondent, is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, importing, and selling various rugs and carpets. In the course and conduct of its business respondent sells said rugs and carpets to various wholesale and retail dealers, and causes such rugs and carpets, when sold, to be transported from its aforesaid places of business in the States of New York and New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rugs and carpets in commerce among

Complaint

36 F. T. C.

and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs and carpets in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their products or the place or method of manufacture thereof, and who do not furnish their dealer-customers with means or instrumentalities for misleading or deceiving the purchasing public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or, more particularly, in certain parts of Southwestern Asia, by hand, of pleasing texture and original and beautiful design, and having a pile of wool or silk and wool the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin of manufacture. Oriental rugs have been for many years and still are held in great public esteem because of their texture, beauty, durability and other desirable qualities, and by reason thereof there is a decided preference on the part of many of the purchasing public for such rugs. When names of Oriental implication are applied to carpets, as well as rugs, the purchasing public understands and believes that said carpets are manufactured in the Orient.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the purchase of said rugs and carpets, respondent has engaged in the practice of describing and designating certain of its rugs, which closely resemble genuine Oriental rugs in appearance, by the names of "Gulistan," "Hindustan," "Mirastan," and "Iranian," and certain of its carpets by the name "Gulistan." The name "Iranian" connotes and indicates a place in the Orient, i. e., Iran or Persia, which is a place of origin of genuine Oriental rugs; the names "Gulistan" and "Mirastan" are distinctly Oriental in sound and suggest and connote places in the Orient, and "Hindustan" is a country of the Orient. The said names have the tendency and capacity to create the mistaken and erroneous belief that the rugs so designated as "Iranian" are made in Persia, that the other rugs are made in the Orient, that all of them are made by hand and are in all respects genuine Oriental rugs, and that "Gulistan" carpets are made in the Orient.

Respondent uses said designations in invoices and in otherwise referring to the same in the sale thereof to dealers, and also causes labels bearing the name "Gulistan" to be securely attached to the said carpets, and labels bearing one or another of said names, to be securely attached to said rugs so as to be plainly discernible to members of the purchasing public when such rugs and carpets are exhibited for sale by retail dealers. Respondent also uses said names in advertising copy furnished to dealers buying said rugs and carpets in the manner and for the purposes hereinafter set forth.

In truth and in fact, respondent's carpets and rugs referred to herein are woven on power looms in its factories in the United States. Said rugs are not made by hand. The individual threads are not knotted in the distinctive manner of the genuine Oriental rug. They do not possess all of the characteristics of the genuine Oriental rug, but do in fact so closely simulate genuine Oriental rugs in appearance, design, and texture that they are practically indistinguishable from them by a large portion of the purchasing public and, consequently, are readily accepted as being genuine Oriental rugs.

PAR. 6. In the course and conduct of its business, respondent has engaged in the practice of furnishing to dealers buying certain of its rugs and carpets made as aforesaid, advertising copy which is intended to be, and is, inserted by such dealers in newspapers, magazines, and other publications of general circulation among the purchasing public in the various States of the United States. Such advertisements contain numerous false and misleading statements which represent and imply that said rugs are in all respects reproductions and copies of genuine Oriental rugs. Among and typical of such statements are the following:

Gulistan * * * the world famous Oriental reproductions that most people cannot tell from a hand-woven Oriental rug.

Superb Persian reproductions * * * Hindustan rugs.

Persian reproductions * * * the Iranian rug.

Mirastan Oriental reproductions * * * see Mirastan and compare it with the costliest Persian rugs. You will be amazed at the similarity.

In truth and in fact, said rugs are not exact copies or reproductions of genuine Orientals in structure, material, quality, or method of manufacture, but merely simulate Orientals in appearance, texture, and design.

PAR. 7. The use by the respondent of the designations and representations as set forth herein in connection with the offering for sale, sale, and distribution of its said rugs and carpets has had, and now has, the tendency and capacity to confuse and mislead purchasers and

Findings

36 F. T. C.

prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs and carpets on account thereof.

The aforesaid acts and practices of respondent have the effect of placing in the hands of retail dealers who purchase said rugs and carpets and resell the same to the purchasing public, means and instrumentalities whereby they may mislead and deceive the purchasing public in the particulars aforesaid.

PAR. 8. As a result of respondent's said acts and practices trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of carpets and of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by respondent to competitors in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 6, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, A. & M. Karagheusian, 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 James A. Purcell, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence, briefs in support of the complaint and in opposition thereto, and oral 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, A. & M. Karagheusian, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office and principal place of business at 293 Fifth Avenue in the city and State of New York, and having manufacturing plants at Freehold and Roselle, in the State of New Jersey. Respondent also has foreign offices in Tientsin, China, and throughout Persia.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, distributing, importing, and selling various rugs and carpets. In the course and conduct of its business, respondent sells such rugs and carpets to various wholesale and retail dealers and causes such rugs and carpets, when sold, to be transported from its aforesaid places of business in the States of New York and New Jersey 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 rugs and carpets in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and 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 rugs and carpets in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their products or the place or method of manufacture thereof and who do not furnish their dealer-customers with means or instrumentalities for misleading or deceiving the purchasing public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient or, more particularly, in certain parts of Asia from Turkey to the Yellow Sea, including India, by hand and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner.

In general, Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and, by reason thereof, there is a demand on the part of many of the purchasing public for such rugs.

Oriental rugs are not woven but are built, tied, or knotted by hand, the knots being tied around the warp threads and the rows of knots held by weft threads. The knots or the thread ends thereof make the pile of the rug. Oriental handmade rugs are designated by names which generally, but not always, are geographic or tribal and, in noun or adjective form, indicative of actual geographic or tribal origin in the Orient. They are never made with hard back or white back.

PAR. 5. During the periods indicated below, respondent used the names "Hindustan," "Iranian," "Mirastan," and "Gulistan" to designate certain lines of rugs in various sizes, patterns, and colors:

Hindustan rugs introduced July 1935; discontinued January 6, 1941.

Mirastan rugs introduced August 1933; discontinued July 5, 1938.

Iranian rugs introduced July 1939; discontinued April 4, 1940.

Gulistan rugs were introduced about 1927 or 1928. The name was registered as a trade-mark on February 26, 1924, but for the first few years was used only on carpeting. Since the introduction of Gulistan rugs they have been continuously sold by the respondent until the present time and have constituted respondent's leading and most expensive line of domestic rugs.

All of said rugs were woven on power looms in respondent's factories in the United States. They were not made by hand, and the individual threads were not knotted in the distinctive manner of the Oriental rug. They did not possess all the characteristics of Oriental rugs. Some were, in pattern and design, copies so far as possible where power looms are used, of specific genuine Oriental rugs, and others had patterns and designs which embodied Oriental designs, motifs, colors, and treatments adapted from genuine Oriental rugs, and, in addition, some of respondent's Gulistan rugs embodied 18th century French designs.

All respondent's rugs are "washed," that is, subjected to a chemical treatment to impart a luster or sheen, which is one of the desirable characteristics of the genuine antique Oriental rug. The very great portion of knotted Oriental rugs have for many years been "washed" for the same reason and in a generally similar manner.

The Mirastan rugs were so woven that the colors and patterns showed through on the back of the rug, a feature which was, until about 1927, found only in certain carpets and in genuine Oriental rugs.

The Hindustan and Iranian rugs had the so-called hard back or white back, which is common in the United States to both the Wilton and Axminster process of manufacturing rugs and carpets, and the patterns and colors of the face did not show through on the back.

Gulistan rugs, until January 6, 1941, were so woven that the colors and patterns showed through on the back of the rugs, a feature of genuine Oriental rugs. Since January 6, 1941, all Gulistan rugs have had the so-called hard back or white back, and the patterns and colors of the face do not show through on the back.

The faces of the Hindustan, Iranian, Mirastan, and Gulistan rugs (other than Gulistan rugs of French design) had many points of resemblance in design, color, and general appearance to genuine Oriental rugs.

PAR. 6. The name "Iranian" is synonymous with "Persian," Iran being the modern name of Persia. Persia has for centuries been identified with Oriental rugs as one of the places of origin thereof, and many Oriental rugs are described and known simply as "Persian." Hindustan is a district of India, a country in which genuine Oriental rugs are produced, and various rugs made in the district are known and described simply as "Indian." The name "Mirastan" is a coined word, the last syllable of which is the Persian word for "place." The name "Gulistan" is made from two Persian words meaning "place of roses" or "garden of roses." There are no genuine Oriental rugs known as "Gulistan." Many genuine Oriental rugs are known by names the final syllable of which is "stan"; for example, "Beluchistan," "Kurdistan," "Laristan," "Cabistan," and "Daghestan."

PAR. 7. In the labeling of its Iranian, Hindustan, and Mirastan rugs, it was customary for the respondent to use two labels—one pasted or attached to the back of the rug, usually on the right-hand corner, and a second label sewed on to the same end of the rug so that the label protruded beyond the rug. On all its labels except the ones attached to the back of the Hindustan and Mirastan rugs appeared the words "Made in U. S. A." and on the labels on the back of the Hindustan and Mirastan rugs appeared the statement "An American Product." However, the terms "Made in U. S. A." appeared either in small letters at the top of the label or in printing closely corresponding to the color of the label so as to be almost indiscernible except by very close examination. The terms "An American Product" appearing on the two rugs as stated are in dark letters closely corresponding to the color of the label and are not readily discernible upon examination. All of said labels contain the statement "Made by the makers of Gulistan."

In the labeling of its Gulistan rugs respondent has on occasion placed a label upon the back of said rug and a label sewed onto the end of the rug, extending beyond the rug, and in some cases has labeled said rugs only by the label placed on the back of the rug.

Findings

36 F. T. C.

In its earlier label, it has used some labels without any statement that the rugs are made in the United States and others which contain the term "Made in U. S. A." or some similar statement, at times rather difficult to discern. In its later labeling, however, the respondent has more or less prominently displayed the terms "Made in U. S. A." and other terms of similar import.

PAR. 8. In connection with the advertising of said rugs, the respondent has featured the name "Gulistan" and in the context of the advertisement usually discussed the method of manufacture of its Gulistan rugs and the patented process developed by the respondent in such manufacture.

PAR. 9. Respondent has also for several years last past designated certain carpets manufactured by it on power looms in its factories in the United States by the name "Gulistan." They are what are generally and commonly known as roll carpets or broadloom carpets. They have the thick, so-called hard back or white back, which is common in the United States to both the Wilton and Axminster processes of manufacture of rugs and carpets, and the patterns and colors of the face do not show through on the back. These carpets are made in a variety of designs and patterns and in plain colors. The patterns and designs are not copied from genuine Oriental rugs nor do they involve Oriental designs, motifs, colors, or treatments adapted from genuine Oriental rugs.

PAR. 10. The use by the respondent of the word "Hindustan" to designate certain of its rugs constitutes a representation that the rugs so designated are true Oriental rugs in all respects, made in India by hand. In like manner the use of the word "Iranian" to designate or describe certain other of its rugs is a representation that the rugs so designated are true Oriental rugs in every respect, made in Persia or Iran by hand.

The use of the word "Mirastan," together with the manner in which said rug was labeled by the respondent, has the capacity and tendency to cause the purchasing public to believe that such rugs are in fact true Oriental rugs in all respects, made in the Orient by hand.

PAR. 11. In the course and conduct of its business, respondent has engaged in the practice of furnishing to dealers buying its rugs, advertising copy which was intended to be, and was, inserted by such dealers in newspapers and magazines and other publications of general circulation among the purchasing public. Contained in certain of such advertising copy were one or all of the following statements:

Gulistan — — the world famous Oriental reproductions that most people cannot tell from a hand woven Oriental rug.

Superb Persian reproductions * * * Hindustan rugs.

Persian reproductions * * * the Iranian rug.

Mirastan Oriental reproductions * * * see Mirastan and compare it with the costliest Persian rugs. You will be amazed at the similarity.

The rugs to which the foregoing statements refer were woven on power looms. Some of them in color and pattern followed as closely as is possible when respondent's method of power-loom weaving is used, but not exactly, the colors and patterns of original handmade rugs from the Orient. Such rugs were made in the same size as the original rugs and in sizes smaller or larger than the original. Some of said rugs were, in color and pattern, adaptations, and combinations of colors, motifs, and patterns found in various genuine Oriental rugs. The manufacture of these rugs did not involve the copying of the color and design of any particular single genuine Oriental rug, and the designs of these rugs as a whole were entirely new. Respondent's rugs are not reproductions of Oriental rugs in structure or method of manufacture but merely simulate Oriental rugs in appearance.

PAR. 12. The use by the respondent of the designations and representations as set forth herein in connection with the offering for sale, sale, and distribution of its said rugs has had, and now has, the tendency and capacity to confuse and mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof.

The aforesaid acts and practices of the respondent have the effect of placing in the hands of retail dealers who purchase said rugs and resell them to the purchasing public, means and instrumentalities whereby they may mislead and deceive the purchasing public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to the respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, answer of the respondent, testimony and other evidence 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, 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, A. & M. Karagheusian, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of 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 "Iranian" or "Hindustan" or any other word indicative of the Orient, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of Oriental rugs.

2. Using the word "Mirastan" or any other word or combination of words or syllables, coined or otherwise, which are indicative of the Orient, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of Oriental rugs.

3. Using the word "reproduction" or any other word of similar import or meaning to designate or describe rugs which are not in fact reproductions of genuine Oriental rugs in all respects, including structure, method of manufacture, and material.

It is further ordered, That no provision of this order to cease and desist shall be construed as prohibiting the respondent from using the term "Gulistan" to designate or describe its rugs and carpets, provided there is used in immediate connection or conjunction therewith a statement which clearly and conspicuously states in appropriate terms that the rugs and carpets so designated and described are woven on power looms in the United States.

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

Syllabus

IN THE MATTER OF
ATMORAY, INC., AND ATMOZONECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4630. Complaint, Nov. 13, 1941—Decision, Apr. 2, 1943*

Where two corporations engaged in the manufacture and interstate sale and distribution of their "Atmoray" electric ozone generator, which was intended for the treatment of various ailments and diseases through use by the lay public in the home without medical supervision—

- (a) Represented, through advertisements disseminated by radio and by circulars, leaflets, pamphlets, and other advertising literature, including purported testimonials, that their device constituted a remedy or competent treatment for many specified ailments and diseases, including sinusitis, asthma, hay fever, tuberculosis, respiratory diseases generally, blood diseases, kidney and liver trouble, diabetes, rheumatism, and cancer; and
- (b) Represented, as aforesaid, that their said device was an effective oxidizing, germicidal, and disinfecting agent;

The facts being that ozone is without therapeutic value in the treatment of the diseases and conditions mentioned, or any others; does not constitute, in the concentration supplied, an effective oxidizing, germicidal, and disinfecting agent, and a concentration sufficiently high to be effective for such purpose, would break down and destroy tissues and cause serious injury, and in some cases death; and the concentration ordinarily produced by the machine was capable of causing rather serious irritation of the respiratory organs, particularly if breathed continuously over an extended period; and

- (c) Failed to reveal facts material in the light of the representations contained in their said advertisements and with respect to consequences which might result from the use of said device under prescribed or usual conditions, in that they failed to reveal the several factors which must be considered in determining the safety of the machine, including its output, the size of room in which operated, ventilation, and length of time machine is operated; that concentration respired should not be permitted to exceed one-half part of ozone to a million parts of air; that care should be taken by user to avoid proximity to the machine while in operation; and that inhalation of an excessive amount of ozone may result in irritation of the respiratory organs;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties, value, and safety of the device in question; thereby causing purchase thereof in substantial quantities, 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.

As respects the making, as alleged, of false and misleading representations in advertisements with respect to the therapeutic value of a machine, the function of which was to generate ozone from the oxygen in the air electrically, and which was intended for lay use in the home without medical supervision in the treatment and cure, as asserted, of a large number of ailments, dis-

Complaint

36 F. T. C.

eases, and conditions: The testimony of a number of members of the public with respect to beneficial results allegedly obtained by them from use of the machine, including that of a naturopath who used it as an adjunct along with other treatment, and of lay witnesses dealing with alleged cures for many different types of diseases, some of the most serious nature, was in such direct conflict with recognized medical and scientific opinion that its correctness was open to serious question, and, in view of all the evidence, was not sufficient to overcome the expert testimony, including that of three witnesses, i. e., a practicing physician who was a specialist in physical therapy, a professor of pharmacology, and a professor of biochemistry.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Coan & Rosenberg, Mr. William M. Stone and *Mr. Livy Stipp*, of Oregon City, Oreg., for Atmozone.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Atmoray, Inc., a corporation, and Atmozone, 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, Atmoray, Inc., is a corporation, created by and existing under the laws of the State of Oregon, with its principal office and place of business located at 408 Northeast Thompson Street, in the city of Portland, State of Oregon. Atmozone, Inc., is a corporation, created by and existing under the laws of the State of Oregon, with its principal office and place of business located in the Beaver Building, in the city of Oregon City, State of Oregon.

PAR. 2. Respondent, Atmozone, Inc., is now and for more than 3 years last past has been engaged in the manufacture of a device known as "Atmoray," an ozone generator which is intended for use in air conditioning, in the elimination of obnoxious odors, and in the treatment and prevention of diseases. The respondent, Atmoray, Inc., has the exclusive sales rights in said device and for more than 3 years last past has engaged in its sale and distribution.

Respondents cause said device, when sold, to be transported from their said places of business in the State of Oregon to the purchasers thereof located in other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said device, by United States mails, by pamphlets, newspaper advertising, and by radio broadcasts having an interstate reception, and through sales representatives, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said device in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

ATMORAY—THE ONLY PROVEN THERAPEUTIC OZONE MACHINE

ATMORAY—THE SYMBOL OF HEALTH

* * * generator of chemically pure ozone, in quantities sufficiently large to be thoroughly effective in the destruction of odors, toxic gases and disease bacteria.

As a means of relieving illness.—Medical authorities claim that approximately 90% of all illnesses from which humanity suffers are due to an impure blood stream. If it were possible to eliminate these impurities from the blood and to maintain a pure blood stream, better health would result. Atmoray is a very practical means of doing just that.

The ray emanating from the Atmoray Generator, in combination with the ozone is that which makes this astounding little instrument of health so valuable.

Disease germs of any kind are completely eliminated when coming into contact with ozone.

Do you actually want relief from Sinus, Colds, Asthma or any one of the host of diseases that emanate from an impure blood stream? If you do, you will find Atmoray ready to do its job in restoring health.

What is Atmoray? It is a creator of new oxygen in the form of ozone. It is deadly to germs. It is health.

Are there days when you wake up just plain all in? Do you suffer from lowered physical resistance, Constipation, Nervousness or Insomnia? Give us an opportunity to help you with Atmoray. It emanates the essentials of life that have slowly been taken away from people down through the years.

The value of this Atmoray has been recognized as a therapeutic measure for a period of time and now Atmoray brings this vulnerable ray to your home. The healthful qualities of Atmoray are far more valuable than dollars and cents.

Ozone, in itself, is the most effective oxidizing, germicidal, disinfecting, and deodorizing agent known.

Complaint

36 F. T. C.

Atmoray not only produces ozone, but with it an invisible ray, that acts directly on the human organism.

The direct action of ozone is its attack on the impurities of the blood stream and while eliminating the impurities it builds and increases the red blood corpuscles. The ray from the Atmoray has an intensive penetrating quality by which it carries the ozone with it directly to the affected part of the anatomy. Back goes vitality to the body. Out goes injurious bacteria. The human system undergoes revitalization, the nerves relax, the blood purifies * * *.

"The conditions that I would mention especially as being most amenable to this (Ozone) treatment are such as Neurasthenia, Melancholia, Insomnia, Hay Fever, Bronchitis, early stages of Pulmonary Tuberculosis, Anemia, Dyspepsia, Constipation, Headache, inactive Liver or Kidneys, and Syphilis in any stage, and I would say that it is a most valuable adjunct to surgical, electrical and other procedures for the relief or cure of organic disease."

A. J. Welch, Jennings Lodge, Oregon, states that he has been relieved of kidney and prostate trouble.

E. E. Limbaugh, Gladstone, Oregon, states that he was completely relieved of sugar diabetes.

Mike Boushley, Oregon City, Oregon, states, "I wish to add my testimony to the value of your machine. I have suffered from rheumatism and arthritis for two years and the treatments have given me immediate relief."

A. H. Bronson of Oregon City, Oregon, states, "I suffered with a large cancer in my jaw which was exceedingly painful. After taking treatments from your machine it was completely absorbed and I experienced no pain or discomfort from it. I recommend this treatment very highly for all cases of cancer."

Mrs. Leslie Smith, 10947 S. E. Harold Street, Portland, Oregon. "This is to state what the Atmoray machine has done for my husband. He had ulcers of the stomach so bad that he couldn't eat hardly anything and was on a strict diet. Also had a serious operation in 1936. After taking 12 or more treatments he is able to eat almost anything and notice a big improvement in his stomach."

PAR. 4. By the use of such advertisements and representations aforesaid, including the reproduction and publication of letters and testimonials concerning said device, and by other and similar advertisements and methods not herein set forth, respondents represent and have represented that the said device, designated as Atmoray, is efficacious in the treatment, cure or alleviation of sinusitis, syphilis, head colds, colitis, neuritis, rheumatism, arthritis, run-down conditions, headaches, asthma, ulcers of the stomach, kidney and prostate gland trouble, liver and bladder infections, infectious diseases, cataracts, heart trouble, pneumonia, tuberculosis, respiratory diseases, blood pressure, hay fever, cancer, weakness, sugar diabetes, deafness, blood diseases, defective eyesight, paralysis, bronchitis, and blood poisoning, and constitutes a competent and effective treatment for such conditions. Said device also has been and is represented as an effective oxidizing, germicidal, disinfecting, and deodorizing agent.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact, the use of said

device does not and cannot constitute an effective treatment or cure or remedy for sinusitis, syphilis, head colds, colitis, neuritis, rheumatism, arthritis, run-down conditions, headaches, asthma, ulcers of the stomach, kidney and prostate gland trouble, liver and bladder infections, infectious diseases, cataracts, heart trouble, pneumonia, tuberculosis, respiratory diseases, blood pressure, hay fever, cancer, weakness, sugar diabetes, deafness, blood diseases, defective eyesight, paralysis, bronchitis, and blood poisoning, nor does it have any therapeutic value in the treatment of such diseases or conditions. Furthermore, said device is of no therapeutic value in the treatment of any disease or condition, nor is it an effective oxidizing, germicidal, disinfecting, and deodorizing agent.

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 described in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, ozone, the gas which the respondents represent as being produced from said device, is a very poisonous and dangerous gas, and if a dilution of such ozone with air equals one part of ozone to two-millionths part of air, the breathing of such air gas mixture is dangerous to health and may cause severe irritation and inflammation of the entire respiratory tract. The density of such an air gas mixture will depend upon the output of ozone from said device, the circulation of the ozone in the air, the size and ventilation of the room in which said device is placed, and other factors. If the production of ozone by said device and the resulting dilution of ozone with air is less than that stated above, such concentration would be of no therapeutic value.

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

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute,

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 13, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Atmoray, Inc., a corporation, and Atmozone, 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 respondent Atmozone, 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 answers 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. Respondent, Atmoray, Inc., is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located at 408 Northeast Thompson Street, Portland, Oreg. Respondent, Atmozone (referred to in the complaint as Atmozone, Inc.), is a corporation, organized and existing under the laws of the State of Oregon, with its principal office and place of business located at 2140 Northeast Union Avenue, Portland, Oreg.

Respondent, Atmozone, is now, and for a number of years last past has been, engaged in the manufacture and in the sale and distribution of a mechanical device known as "Atmoray," an ozone generator intended for use in the treatment of various ailments and diseases of the human body. Respondent, Atmoray, Inc., through an agreement with respondent, Atmozone, held the exclusive sales rights to the device for a period of some 3 years, and during such period was engaged in the sale and distribution of the device.

PAR. 2. Respondents cause or have caused their device, when sold, to be transported from their places of business in the State of Oregon to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain or 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 inducing the purchase of their device, the respondents have disseminated and have caused the dissemination of advertisements concerning their device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their device by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in such advertisements, disseminated and caused to be disseminated as herein set forth, by the United States mails, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

ATMORAY—THE ONLY PROVEN THERAPEUTIC OZONE MACHINE

As a means of relieving illness.—Medical authorities claim that approximately 90% of all illnesses from which humanity suffers are due to an impure blood stream. If it were possible to eliminate these impurities from the blood and to maintain a pure blood stream, better health would result. Atmoray is a very practical means of doing just that. * * * (Com. Ex. No. 4)

ATMORAY—THE SYMBOL OF HEALTH

* * * generator of chemically pure ozone in quantities sufficiently large to be thoroughly effective in the destruction of * * * disease bacteria. * * * (Com. Ex. No. 4)

The ray emanating from the Atmoray Generator, in combination with the ozone, is what makes this astounding little instrument of health so valuable. (Com. Ex. No. 13)

* * * Disease germs of any kind are completely eliminated when coming in contact with Ozone. (Com. Ex. No. 1)

* * * Do you actually want relief from Sinus, Colds, Asthma or any one of the host of diseases that emanate from an impure blood stream? If you do, you will find Atmoray ready to do its job in restoring health. * * * (Com. Ex. No. 11)

What is Atmoray? * * * It is deadly to germs. It is a creator of new oxygen in the form of ozone. * * * It is HEALTH. (Com. Ex. No. 11)

Are there days when you wake up just plain all in? Do you suffer from lowered physical resistance, constipation, nervousness, or insomnia? * * * Give us an opportunity to help you with Atmoray. * * * It emanates the essentials of life that have slowly been taken away from people down through the years * * *. The value of this ray has been recognized as a therapeutic measure for a period of time and now Atmoray brings this valuable ray to your home. The healthful qualities of Atmoray are far more valuable than dollars and cents. * * * (Com. Ex. No. 11)

* * * Ozone, in itself, is the most effective oxidizing, germicidal, disinfecting * * * agent known * * *. (Com. Ex. No. 2)

* * * Atmoray not only produces ozone but with it an invisible ray that acts directly on the human organism. * * * (Com. Ex. No. 1)

* * * the direct action of ozone * * * is its attack on the impurities of the blood stream and while eliminating the impurities it builds and increases the red blood corpuscles. The ray from the Atmoray has an intensive penetrating quality by which it carries the ozone with it directly to the affected part of the anatomy. Back goes vitality to the body. Out goes injurious bacteria. The human system undergoes revitalization, the nerves relax, the blood purifies * * *. (Com. Ex. No. 1)

"The conditions that I would mention especially as being most amenable to this (Ozone) treatment are such as Neurasthenia, Melancholia, Insomnia, Hay Fever, Bronchitis, early stages of Pulmonary Tuberculosis, Anemia, Dyspepsia, Constipation, Headache, inactive Liver or Kidneys, and Syphilis in any stage, and I would say that it is a most valuable adjunct to surgical, electrical and other procedures for the relief or cure of organic disease." (Com. Ex. No. 1)

"A. J. Welch, Jennings Lodge, Oregon, states that he has been relieved of kidney and prostate trouble." (Com. Ex. No. 2)

"E. E. Limbaugh, Gladstone, Oregon, states that he was completely relieved of sugar diabetes." (Com. Ex. No. 2)

Mike Boushley, Oregon City, Oregon, states "I wish to add my testimony to the value of your machine. I have suffered from rheumatism and arthritis for two years and the treatments have given me immediate relief." (Com. Ex. No. 2)

A. H. Bronson of Oregon City, Oregon, states, "I suffered with a large cancer in my jaw which was exceedingly painful. After taking treatments from your machine it was completely absorbed and I experienced no pain or discomfort from it. I recommend this treatment very highly for all cases of cancer." (Com. Ex. No. 2)

Mrs. Leslie Smith, 10947 S. E. Harold Street, Portland, Oregon. "This is to state what the Atmoray machine has done for my husband. He had ulcers of the stomach so bad that he couldn't eat hardly anything and was on a strict diet. Also had a serious operation in 1936. After taking 12 or more treatments he is able to eat almost anything and notice a big improvement in his stomach." (Com. Ex. No. 2)

PAR. 4. Through the use of these representations, including the publication of letters and testimonials received from persons purchasing their device, and through the use of other and similar representations, respondents have represented, directly or by implication, that their device constitutes a cure or remedy, or a competent and effective treatment, for various ailments, disorders, and diseases of the human

body, including sinusitis, head colds, asthma, hay fever, bronchitis, tuberculosis, pneumonia, respiratory diseases generally, dyspepsia, constipation, colitis, nervousness, melancholia, insomnia, neurasthenia, weakness, run-down conditions, anemia, blood poisoning, blood diseases, headache, inactive liver or kidneys, kidney and prostate gland trouble, liver and bladder infections, infectious diseases generally, syphilis, sugar diabetes, rheumatism, arthritis, neuritis, paralysis, cancer, ulcers of the stomach, heart trouble, cataracts, defective eyesight, and deafness; and that respondents' device is an effective oxidizing, germicidal, and disinfecting agent.

PAR. 5. Respondents' machine is an ozone generator, its function being to generate or manufacture ozone from the oxygen in the air. It is operated by electric current. The machine is intended for use by the lay public in the home without medical supervision. Ozone is a very active form of oxygen. Ordinarily, the oxygen in the air is made up of two atoms of oxygen to each molecule, and is known in chemistry as "O₂." Ozone, however, is made up of three atoms of oxygen to each molecule, the atoms being linked in a rather loose combination. It is highly reactive with the tissues of the human body and with organic substances generally.

During the course of the hearings there were introduced, at the instance of the Commission, three expert witnesses, one being a practicing physician who is also a specialist in physical therapy, the second a professor of pharmacology, and the third a professor of biochemistry. The testimony of these witnesses establishes that ozone is without therapeutic value, that it has never been regarded in medical science as a therapeutic agent. It is wholly ineffectual in the treatment of any of the ailments or disorders for which it is recommended by respondents. It is not a cure or remedy for, nor does it possess any therapeutic value in the treatment of, sinusitis, head colds, asthma, hay fever, bronchitis, tuberculosis, pneumonia, respiratory diseases generally, dyspepsia, constipation, colitis, nervousness, melancholia, insomnia, neurasthenia, weakness, run-down conditions, anemia, blood poisoning, blood diseases, headache, inactive liver or kidneys, kidney and prostate gland trouble, liver and bladder infections, infectious diseases generally, syphilis, sugar diabetes, rheumatism, arthritis, neuritis, paralysis, cancer, ulcers of the stomach, heart trouble, cataracts, defective eyesight, or deafness. Nor does it possess any therapeutic value in the treatment of any other disease or disorder of the human body.

Nor does ozone, in the concentration supplied by respondents' machine, constitute an effective oxidizing, germicidal, or disinfecting agent. While ozone in sufficiently high concentrations (beginning with

concentrations of 15 parts of ozone per 1,000,000 parts of air) is capable of oxidizing organic substances and destroying bacteria, concentrations sufficiently powerful to effect such results will at the same time break down or destroy human tissue and cause serious injury, and, in some cases, death. In fact, ozone is one of the most powerful of the known gases, including the gases used for war purposes. It is particularly irritating to the mucous membrane of the respiratory organs.

The concentration of ozone ordinarily produced by respondents' machine is from one to two parts of ozone per 1,000,000 parts of air. This concentration is capable of causing rather serious irritation of the respiratory organs, particularly if breathed continuously over an extended period of time. The exact amount of ozone respired by a user of the machine will depend upon a number of factors, including the output of the particular machine used, the size of the room in which the machine is operated, the ventilation, and the length of time the machine is operated. In no event should the concentration respired be permitted to exceed one-half part of ozone per million parts of air. Care should also be taken by the user to avoid proximity to the machine while it is in operation.

In support of their representations, respondents introduced the testimony of a practitioner of naturopathy who had used respondents' machine in his practice, and the testimony of a number of members of the public who testified to beneficial results alleged to have been obtained by them from the use of the machine. The record further shows, however, that the naturopath had used the machine merely as an adjunct along with other treatment, and it is questionable whether the beneficial results obtained in the several cases referred to were due to the machine or to the other treatment. With respect to the lay witnesses, whose testimony dealt with alleged cures for many different types of disease, some of a most serious nature, the Commission is of the opinion that this testimony is in such direct conflict with recognized medical and scientific opinion that its correctness is open to serious question. After consideration of all of the evidence introduced at the instance of respondents, the Commission finds that such evidence is insufficient to overcome the expert testimony in the record.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their device, as set forth in paragraphs 3 and 4 hereof, are erroneous, misleading, and deceptive, and constitute false advertisements.

PAR. 7. The Commission finds, also, that respondents' advertisements are false for the further reason that they fail to reveal facts material in the light of the representations contained therein, and material with

457

Order

respect to consequences which may result from the use of respondents' device under the conditions prescribed in such advertisements or under such conditions as are customary or usual. The advertisements fail to reveal the several factors which must be considered in determining the safety of the machine, that the concentration of ozone should not be permitted to exceed one-half part of ozone per 1,000,000 parts of air, that proximity to the machine should be avoided, and that the inhalation of an excessive amount of ozone may result in irritation of the respiratory organs.

PAR. 8. The use by respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and value of respondents' device and with respect to the safety of such device, 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.

PAR. 9. Respondents have also represented their device to be an effective deodorizing agent, and the complaint charged that such representations were false and misleading. The evidence adduced on this issue is not sufficiently clear to enable the Commission to make a definite finding thereon, and the Commission is therefore of the opinion and finds that the complaint should be dismissed as to this point without prejudice to the right of the Commission, should the facts so warrant, to reopen the proceeding or to institute a new proceeding on such point.

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 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.

Order

36 F. T. C.

It is ordered, That the respondents, Atmoray, Inc., a corporation, and Atmozone, (referred to in the complaint as Atmozone, 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' device designated "Atmoray," 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 advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication,

(a) That respondents' device constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of, sinusitis, head colds, asthma, hay fever, bronchitis, tuberculosis, pneumonia, respiratory diseases generally, dyspepsia, constipation, colitis, nervousness, melancholia, insomnia, neurasthenia, weakness, run-down conditions, anemia, blood poisoning, blood diseases, headache, inactive liver or kidneys, kidney or prostate gland trouble, liver or bladder infections, infectious diseases generally, syphilis, sugar diabetes, rheumatism, arthritis, neuritis, paralysis, cancer, ulcers of the stomach, heart trouble, cataracts, defective eyesight, deafness, or any other disease or disorder of the human body; or

(b) That respondents' device, or the product thereof in the quantities produced, is an effective oxidizing, germicidal, or disinfecting agent.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that the safety of respondents' device depends upon the output of the particular machine used, the size of the room in which the machine is operated, the ventilation, and the length of time the machine is operated; that the concentration of ozone should not in any case be permitted to exceed one-half part of ozone per million parts of air; that proximity to the machine should be avoided; and that the inhalation of an excessive amount of ozone may result in irritation of the respiratory organs.

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-

457

Order

graph 1 hereof or which fails to contain the warning set forth in paragraph 2 hereof.

It is further ordered, That the respondents shall, with 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.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the point with respect to the effectiveness of respondents' device as a deodorizing agent without prejudice to the right of the Commission, should the facts so warrant, to reopen the proceeding or to institute a new proceeding on such point.

Complaint

36 F. T. C.

IN THE MATTER OF

ISAAC S. BRILL, HERMAN A. GALLANT, AND SIMON D.
BRILL, TRADING AS GALLANT TRADING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4780. Complaint, July 6, 1942—Decision, Apr. 2, 1943*

Where three individuals, engaged as partners in interstate sale and distribution of various articles of merchandise, including clothing, shoes, blankets, mattresses, and tarpaulins; by means of pamphlets, circulars, letters, other printed material, and newspaper advertisements, directly or by implication—

- (a) Represented that some of their Army Ill-Top shoes were absolutely perfect; that their mattresses were new and perfect Army mattresses which had been manufactured to Government specifications but, for some unknown reason, had been rejected by the Government; that their tarpaulins were all perfect; and that their blankets were Army blankets;

The facts being that said shoes showed signs of wear; mattresses in question had been renovated and repaired after having been gnawed by mice, and were not Army mattresses or manufactured to Government specifications, or rejected by the Government; not all of their tarpaulins were perfect; and some of their blankets were not Army blankets; and

- (b) Represented falsely that they dealt in Army goods exclusively, that all of their merchandise was purchased from the Government, and that no other dealers had such goods to offer to the public;

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the nature, quality, and value of said merchandise, thereby inducing its purchase thereof:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. David I. Lippert, of Los Angeles, Calif., for Isaac S. Brill and Simon D. Brill.

Mr. Charles Watkins, of Los Angeles, Calif., for Herman A. Gallant.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Isaac S. Brill, Herman A. Gallant, and Simon D. Brill, copartners, trading as Gallant Trading Co., hereinafter referred to as the respondents, have violated the provisions of said act, and it appearing to the Commission

that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint in that respect as follows:

PARAGRAPH 1. The respondents, Isaac S. Brill, Herman A. Gallant, and Simon D. Brill are copartners, trading as Gallant Trading Co., with their principal place of business located at 1111 South Hill Street, Los Angeles, Calif., and a branch or warehouse storage room located at 1619 South Vermont Street, Los Angeles, Calif.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of selling and distributing general merchandise, including clothing, shoes, blankets, mattresses, tarpaulins, and other commodities.

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 aforesaid business respondents have falsely represented that their said products are new and perfect, having been purchased from the Government and are to be found only at the store of respondents, the largest exclusive retail army goods store in the country, such false representations being made by the use of statements appearing in pamphlets, circulars, letters, advertisements published in newspapers, and other printed and written material. Among and typical of said false, misleading, and deceptive statements and representations, are the following:

U. S. ARMY MARCHING SHOES NEW

If you can wear a Size 5 to 6½ (a few Size 7) you can get a brand new pair of Army marching shoes, perfect in every respect, for less than half what the Government is paying;

ARMY NEW KAPOK MATTRESSES ARMY TARPAULINS

Welgh from 14 to 30 oz. Every size. All perfect. Some new.

ARMY HI-TOP SHOES

New Oak soles—rubber heels—absolutely perfect.

THE WEST'S LARGEST EXCLUSIVE ARMY GOODS DEALERS

GALLANT TRADING CO.
Eleventh & Hill St. Prospect 2958

ALL-WOOL BLANKETS NEW

100% wool. Grey. Weight 4 lbs. Size 66 x 84. An unusually large and heavy army emergency blanket.

PERHAPS THESE AND HUNDREDS OF OTHER GOVERNMENT PURCHASED ITEMS, TO BE FOUND ONLY HERE, WILL HELP YOU SOLVE YOUR GIFT PROBLEMS.

PROBABLY THE LARGEST EXCLUSIVE RETAIL ARMY GOODS STORE IN THE UNITED STATES.

KAPOK MATTRESSES

GOV't. rejects; but for what reason we don't know, as the mattresses appear perfect to us.

PAR. 4. By means of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondents have represented, directly or by implication, that their Army marching shoes are brand new and perfect in every respect; that their Army Hi-Top shoes are absolutely perfect; that their mattresses are new Army mattresses, are perfect, and for some unknown reason have been rejected by the Government; that their tarpaulins are all perfect, some of which are new; that respondents are exclusive Army goods dealers; that their blankets are Army blankets; that their merchandise is all purchased from the Government and no dealers, other than respondents, have such goods to sell to the public.

PAR. 5. Such statements and representations are false, misleading, and deceptive. In truth and in fact respondents' Army marching shoes are neither new nor perfect, but are old obsolete shoes manufactured approximately 20 years ago. Respondents' Army Hi-Top shoes are not absolutely perfect, but show signs of wear. Respondents' mattresses are not Army mattresses; they are not new; they are not perfect but have been renovated and repaired, after having been gnawed by mice; they have not been rejected by the Government. Respondents' tarpaulins are not all perfect, and none of them are new. Respondents are not exclusive Army goods dealers, but purchase substantial quantities of merchandise from sources other than Government agencies. Respondents' blankets are not Army blankets. Respondents' merchandise is not all purchased from the Government and many goods similar thereto and of the same type as respondents' goods can be bought by the public from dealers other than respondents.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and advertisements as herein set forth 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 said statements, representations, and advertisements are true and because of said erroneous and mistaken belief a substantial number of the purchasing public has purchased and is purchasing respondents' said products.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and consti-

tute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission 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, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Isaac S. Brill, Herman A. Gallant, and Simon D. Brill, copartners, trading as Gallant Trading 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' answers to the complaint, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was entered into between the attorney for the Commission and the attorney for respondents and dictated into the record. This stipulation provided that the facts therein set forth should be taken as the facts in the proceeding, and in lieu of testimony in support of the allegations of the complaint or in opposition thereto. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answers, stipulation as to the facts (such stipulation having been accepted and approved by the Commission), 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, Isaac S. Brill, Herman A. Gallant, and Simon D. Brill, are individuals, who for a period of time immediately preceding February 27, 1942, were copartners, trading as Gallant Trading Co., with their principal place of business located at 1111 South Hill Street, Los Angeles, Calif. Respondents were engaged in the business of selling and distributing various articles of merchandise, including, among others, clothing, shoes, blankets, mattresses, and tarpaulins.

PAR. 2. Respondents caused their merchandise, 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 maintained a course of trade in their merchandise in commerce among and between various States of the United States.

Findings

36 F. T. C.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents distributed and caused to be distributed among prospective purchasers certain advertising material in the form of pamphlets, circulars, and letters, as well as other printed material. Respondents also advertised their merchandise in newspapers having a general interstate circulation. Among and typical of the statements and representations contained in respondents' advertisements were the following:

ARMY HI-TOP SHOES

New Oak soles—rubber heels—absolutely perfect.

**ARMY NEW KAPOK MATTRESSES
KAPOK MATTRESSES**

GOV't. rejects; but for what reason we don't know, as the mattresses appear perfect to us.

ARMY TARPAULINS

Weight from 14 to 30 oz. Every size. All perfect.

ALL-WOOL BLANKETS NEW

100% wool. Gray. Weight 4 lbs. Size 66 x 84. An unusually large and heavy army emergency blanket.

**THE WEST'S LARGEST EXCLUSIVE ARMY GOODS DEALERS
GALLANT TRADING CO.**

Eleventh & Hill St. Prospect 2958

**PROBABLY THE LARGEST EXCLUSIVE RETAIL ARMY GOODS STORE IN
THE UNITED STATES**

PERHAPS THESE AND HUNDREDS OF OTHER GOVERNMENT PURCHASED ITEMS, TO BE FOUND ONLY HERE, WILL HELP YOU SOLVE YOUR GIFT PROBLEMS.

PAR. 4. Through the use of these statements and representations and others of a similar nature, respondents represented, directly or by implication, that some of their Army Hi-Top shoes were absolutely perfect; that their mattresses were new and perfect Army mattresses which had been manufactured to Government specifications but which for some unknown reason had been rejected by the Government; that their tarpaulins were all perfect; that their blankets were Army blankets; that respondents dealt in Army goods exclusively and that all of their merchandise was purchased from the Government; and that no dealers other than respondents had such goods to offer to the public.

PAR. 5. The Commission finds that these statements and representations were misleading and deceptive. Respondents' Army Hi-Top shoes were not absolutely perfect but showed signs of wear. The mattresses were not Army mattresses, nor were they new or perfect; they

were mattresses which had been renovated and repaired after having been gnawed by mice. They had not been manufactured to Government specifications, and did not constitute merchandise which had been rejected by the Government. All of the tarpaulins were not perfect. Some of the blankets were not Army blankets. Respondents did not deal in Army goods exclusively, nor was all of their merchandise obtained from the Government. Merchandise of the same type and character as that sold by respondents could be obtained by the public from numerous other dealers.

PAR. 6. The Commission finds further that the use by the respondents of these deceptive and misleading representations had the tendency and capacity to and did mislead and deceive a substantial portion of the purchasing public with respect to the nature, quality, and value of respondents' merchandise, and as a result of the erroneous and mistaken belief engendered by such representations, such portion of the public was induced to purchase respondents' merchandise.

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 respondents, stipulation as to the facts, 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, Isaac S. Brill, Herman A. Gallant, and Simon D. Brill, individually, and trading as Gallant Trading Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' shoes are perfect, when such is not the fact.

2. Representing, directly or by implication, that respondents' mattresses are Army mattresses, or are new or perfect, when such is not the fact.

Order

38 F. T. C.

3. Representing, directly or by implication, that respondents' mattresses were manufactured to Government specifications but have been rejected by the Government for some unknown reason, when such is not the fact.

4. Representing, directly or by implication, that respondents' tarpaulins are perfect, when such is not the fact.

5. Representing, directly or by implication, that respondents' blankets are Army blankets, when such is not the fact.

6. Representing, directly or by implication, that respondents deal in Army goods exclusively, or that all of their merchandise is obtained from the Government.

7. Misrepresenting in any manner, or by any means, the condition or origin of respondents' merchandise.

8. Representing, directly or by implication, that merchandise of the same type and character as respondents' merchandise is not available to the public from other dealers.

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

BENJAMIN L. GRABOSKY AND SAMUEL GRABOSKY,
TRADING AS GRABOSKY BROTHERS

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

Docket 4740. Complaint, Mar. 26, 1942—Decision, Apr. 6, 1943

Where a firm, engaged in the manufacture and interstate sale and distribution
of cigars to retail drug chains and independent retailers—

Contracted to make, and made, valuable payments to certain selected chain
store customers, as compensation for the furnishing of services or facilities,
such as counter, showcase, or window displays for the advertising of their
cigars, making payments amounting to as much as \$255 a month to a
single customer on the basis of \$1.50 per month per branch store, and
to as much as \$500 a month on a flat sum basis, while refusing frequent
requests to make such payments available on proportionally equal or any
terms to independent retail customers and other chain store customers who
were able and willing to furnish the same services and facilities and were
competitive with customers compensated as aforesaid:

Held, That aforesaid payments, and contracts for such payments, were in vio-
lation of subsection (d) of sec. 2 of the Clayton Act, as amended.

Mr. W. C. Kern for the Commission.

Blumberg & Kleeblatt, 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
(d) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as
amended by the Robinson-Patman Act, approved June 19, 1936,
hereby issues its complaint, stating its charges with respect thereto
as follows:

PARAGRAPH 1. Respondents, Benjamin L. Grabosky and Samuel
Grabosky, are copartners, trading as Grabosky Bros., having their
principal office and place of business at Northeast Corner Eleventh
and Wood Streets, Philadelphia, Pa. Respondents operate and
maintain manufacturing plants at Philadelphia, Pa., and at Perth
Amboy, N. J.

PAR. 2. Respondents are now, and have been since June 19, 1936,
engaged in the manufacture, sale, and distribution of cigars. Re-

spondents sell and distribute their cigars to purchasers in the various States of the United States and in the District of Columbia, and cause the said cigars, when sold, to be shipped and transported from the States in which they are manufactured across State lines to the purchasers thereof in other States of the United States and in the District of Columbia. There is, and has been at all times mentioned herein, a constant current of trade and commerce in the said cigars between the respondents and purchasers in other States. Respondents' cigars are sold by them for use, consumption, or resale within the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents sell their cigars to retail drug chains and to independent retailers, who in turn sell to the consuming public. Respondents, since June 19, 1936, have contracted to make and have made, and are now making, valuable payments to some of their chain store customers selected by respondents, as compensation or in consideration for the furnishing by the said selected customers of services or facilities, such as counter, showcase, or window displays, for the advertising of respondents' cigars. Respondents have not made such payments or considerations available on proportionally equal terms to all of their customers competing with the aforesaid compensated customers in the distribution of respondents' cigars.

As examples of these practices respondents, during such period, as consideration for the aforesaid displays, have contracted to pay and have paid some chain store customers \$1.50 per month per branch store, the total monthly payments amounting to as much as \$255 to a single customer. With other chain store customers respondents have contracted to pay and have paid, during such period, flat sums for the said displays amounting to as much as \$500 per month to a single customer. Although often requested so to do by respondents' independent retailer customers and other chain store customers competing with these compensated customers, and who are able and willing to furnish the same services and facilities, respondents have refused to make such payments available to them on proportionally equal terms, or on any terms.

PAR. 4. The above-described acts and practices of respondents are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

restraints and monopolies, and for other purposes" (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), the Federal Trade Commission, on the 26th day of March, 1942, issued, and thereafter served, its complaint in this proceeding upon the respondents, Benjamin L. Grabosky and Samuel Grabosky, individuals, trading as Grabosky Bros., charging them with violation of the provisions of subsection (d) of sec. 2 of the said act, as amended. After the issuance and service of the said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing relating thereto, such admissions of fact being solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals or the Supreme Court of the United States or in any other court proceeding instituted by the Federal Trade Commission for its enforcement. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and amended 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, Benjamin L. Grabosky and Samuel Grabosky, are copartners, trading as Grabosky Brothers, having their principal office and place of business at Northeast Corner Eleventh and Wood Streets, Philadelphia, Pa. Respondents operate and maintain manufacturing plants at Philadelphia, Pa., and at Perth Amboy, N. J.

PAR. 2. Respondents are now, and have been since June 19, 1936, engaged in the manufacture, sale and distribution of cigars. Respondents sell and distribute their cigars to purchasers in the various States of the United States and in the District of Columbia, and cause the said cigars, when sold, to be shipped and transported from the States in which they are manufactured across State lines to the purchasers thereof in other States of the United States and in the District of Columbia. There is, and has been at all times since the above date, a constant current of trade and commerce in the said cigars between the respondents and purchasers in other States. Respondents' cigars are sold by them for use, consumption or resale within the United States and in the District of Columbia.

Order

36 F. T. C.

PAR. 3. In the course and conduct of their business respondents sell their cigars to retail drug chains and to independent retailers, who in turn sell to the consuming public. Respondents, since June 19, 1936, have contracted to make and have made, and are now making, valuable payments to some of their chain store customers selected by respondents, as compensation or in consideration for the furnishing by the said selected customers of services or facilities, such as counter, showcase or window displays, for the advertising of respondents' cigars. Respondents have not made such payments or considerations available on proportionally equal terms to all of their customers competing with the aforesaid compensated customers in the distribution of respondents' cigars.

As examples of these practices respondents, during such period, as consideration for the aforesaid displays, have contracted to pay and have paid some chain store customers \$1.50 per month per branch store, the total monthly payments amounting to as much as \$255 to a single customer. With other chain store customers respondents have contracted to pay and have paid, during such period, flat sums for the said displays amounting to as much as \$500 per month to a single customer. Although often requested so to do by respondents' independent retailer customers and other chain store customers competing with these compensated customers, and who are able and willing to furnish the same services and facilities, respondents have refused to make such payments available to them on proportionally equal terms, or on any terms.

CONCLUSION

The aforesaid payments, and contracts for such payments, as herein found, are in violation of subsection (d) of section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of respondents, in which amended answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of sub-

section (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That the respondents, Benjamin L. Grabosky and Samuel Grabosky, individually, and trading under the name of Grabosky Bros., or trading under any other name, their representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the sale of any of respondents' cigars in commerce, as "commerce" is defined in the said Clayton Act, do forthwith cease and desist:

From paying or contracting to pay, or granting or allowing anything of value to or for the benefit of any customer as compensation or in consideration of any counter, showcase or window displays or other services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any such product or commodity, unless such payments or allowances are available on proportionally equal terms to all other customers competing with such compensated customers in the distribution of such product or commodity.

It is further ordered, That the respondents, Benjamin L. Grabosky and Samuel Grabosky, individuals, trading as Grabosky Bros., shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist herein set forth.

IN THE MATTER OF
THE RICHMAN BROTHERS COMPANY

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

Docket 4844. Complaint, Oct. 2, 1942—Decision, Apr. 6, 1943

Where a corporation, engaged in the manufacture and interstate sale and distribution of men's clothing and other similar products, operating 62 retail stores in 57 cities throughout the United States, doing a mail-order business, and employing some 600 salesmen; by means of newspaper advertisements, catalogs, cards, and folders, and other advertising matter, directly and by implication—

Represented that its clothing had been recommended by all consumers' research bodies testing clothing; that all such research bodies, as a result of such tests, had rated its clothing as being of the best grade; and that the leading consumers' research bodies of the United States had investigated the outstanding brands of clothing and in every instance rated its clothes first in the low-priced field;

When in fact only three of the numerous consumers' research bodies in the United States had actually made tests of, and rated, its clothing;

With effect of misleading and deceiving a substantial portion of the purchasing public in aforesaid respects, and of thereby causing 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. Randolph Preston*, trial examiner.

Mr. B. G. Wilson for the Commission.

Jones, Day, Cockley & Reavis, 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 Richman Bros. 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 Richman Bros. Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 1600 East Fifty-fifth Street, Cleveland, Ohio.

The respondent is now, and for more than 2 years last past has been, engaged in the manufacture of men's clothing and other similar products, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent operates approximately 62 retail stores in 57 cities throughout the United States, does a mail-order business and employs some 600 salesmen.

Respondent causes its said products when sold to be shipped from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia.

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. 2. In the course and conduct of its said business and for the purpose of inducing the purchase of its said clothing, the respondent has disseminated false and misleading statements and representations with respect to said clothing. Such false and misleading statements and representations have been inserted in newspapers having a general circulation, catalogs, cards and folders, and other advertising matter distributed to members of the purchasing public situated in various States of the United States. Among and typical of such false and misleading statements and representations are the following:

Recommended by all consumers' research bodies.

Research bodies rate Richman's clothes "tops".

During the last three years the leading consumers' research bodies of the United States have investigated the outstanding brands of clothing and in every instance rated Richman Brothers' clothes first in the low priced field.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly and by implication, that its clothing has been recommended by all consumers' research bodies testing clothing; that all such research bodies as a result of such tests have rated respondent's clothing to be of the best grade; and that the leading consumers' research bodies of the United States have investigated the outstanding brands of such clothing and in every instance rated respondent's clothes first in the low-priced field.

PAR. 4. The foregoing statements and representations used and disseminated by the respondent in the manner aforesaid are false, misleading, and deceptive. In truth and in fact, said clothing offered for sale and sold by respondent has not been recommended by

Findings

36 F. T. C.

all consumers' research bodies testing clothing, nor have all consumers' research bodies testing clothing rated respondent's clothing as being of the best grade or as being "tops" as the term is understood by the purchasing public. All the leading consumers' research bodies of the United States have not investigated the brands of respondent's clothing or made tests or rated said clothing first in the low-priced field. In truth and in fact, only three consumers' research bodies have actually made tests and rated respondent's clothing. However, there are numerous other leading organizations in the United States which are engaged in consumers' research work and which are properly qualified as such and which have not tested or recommended respondent's products.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for men's clothing which has been tested and rated first in the low-priced field by leading consumers' research bodies over men's clothing which has not been so tested and rated by such organizations.

PAR. 6. The aforesaid acts and practices of the respondent have had, and now have, the capacity and tendency to and do mislead and deceive a substantial portion of purchasers and prospective purchasers into the erroneous and mistaken belief that respondent's clothing has in fact been recommended by all leading consumers' research bodies and caused members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said clothing.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 2, 1942, issued and subsequently served its complaint in this proceeding upon respondent, The Richman Bros. 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 issuance of the complaint and the filing of respondent's answer thereto, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was read into the record in lieu of testimony in support of the charges stated in the complaint and in opposition thereto. The stipulation provided that the Com-

mission might proceed upon such statement of facts to make its findings as to the facts and its conclusion based thereon, and issue its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding came on for final hearing before the Commission on the complaint, answer, and stipulation as to the facts; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of 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 Richman Bros. Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1600 East Fifty-fifth Street, Cleveland, Ohio.

The respondent, is now, and for more than 2 years, last past, has been engaged in the manufacture of men's clothing and other similar products, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent operates approximately 62 retail stores in 57 cities throughout the United States, does a mail-order business, and has employed some six hundred salesmen.

Respondent causes its said products, when sold, to be shipped from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia.

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. 2. In the course and conduct of its said business and for the purpose of inducing the purchase of its said clothing, the respondent has disseminated misleading statements and representations with respect to said clothing. Such misleading statements and representations have been inserted in newspapers having a general circulation, catalogs, cards and folders, and other advertising matter distributed to members of the purchasing public situated in various States of the United States. Among and typical of such misleading statements and representations are the following:

Recommended by all consumers' research bodies.
Research bodies rate Richman's clothes "tops."

Findings

36 F. T. C.

During the last three years the leading consumers' research bodies of the United States have investigated the outstanding brands of clothing and in every instance rated Richman Brothers' clothes first in the low priced field.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly and by implication, that its clothing has been recommended by all consumers' research bodies testing clothing; that all such research bodies as a result of such tests have rated respondent's clothing to be of the best grade; and that the leading consumers' research bodies of the United States have investigated the outstanding brands of clothing and in every instance rated respondent's clothes first in the low-priced field.

PAR. 4. The foregoing statements and representations used and disseminated by the respondent in the manner aforesaid are misleading and deceptive. In truth and in fact said clothing offered for sale and sold by respondent has not been recommended by all consumers' research bodies testing clothing, nor have all consumers' research bodies testing clothing rated respondent's clothing as being of the best grade or as being "tops," as the term is understood by the purchasing public. All the leading consumers' research bodies of the United States have not investigated respondent's clothing, or made tests of or rated said clothing first in the low-priced field. In truth and in fact, only three consumers' research bodies have actually made tests of and rated respondent's clothing. There are numerous other leading organizations in the United States which are engaged in consumers' research work and which are properly qualified as such, and which have not tested or recommended respondent's products.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for men's clothing which has been tested and rated first in the low-priced field by leading consumers' research bodies, over men's clothing which has not been so tested and rated by such organizations.

PAR. 6. The aforesaid acts and practices of the respondent have had and now have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's said clothing has been recommended by all consumer research bodies engaged in testing clothing, that all such research bodies have rated respondent's clothing to be of the best grade, and that the leading consumer research bodies in the United States have investigated the outstanding brands and have found respondent's clothing first in the low-priced field. Said erroneous and mistaken belief has caused such portion of the public to purchase substantial quantities of respondent's said clothing.

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, respondent's answer, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record, 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 Richman Bros. 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 men's clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondent's clothing has been tested or recommended by all consumers' research bodies in the United States which test clothing.

2. Representing, directly or indirectly, that all consumers' research bodies in the United States which test clothing have rated respondent's clothing to be of the best grade.

3. Representing, directly or indirectly, that the leading consumers' research bodies in the United States have tested the outstanding brands of men's clothing and have found respondent's clothing to be first in the low-priced field.

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
GARMENT BOX 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 4777. Complaint, June 26, 1942—Decision, Apr. 10, 1943

Where 13 corporations and 11 other concerns, members of an unincorporated trade association, engaged in the manufacture or assembly, sale, and distribution of garment boxes to garment wholesalers and retailers; constituting for many purchasers of such articles their only regular source of supply, and in competition with one another prior to, and but for the matters below set forth;

Acting in concert with one another and with and through their said association and seven individuals who were president and directors thereof; with intent of eliminating price competition among themselves—

- (a) Entered into and carried out an agreement to fix and maintain uniform prices for garment boxes, and at meetings of their association discussed and agreed upon such prices;
- (b) Adopted and carried out a plan of collecting information with respect, among other things, to the quantities of products sold by members and selling prices thereof, including the names of customers and quantities to be sold to each, and consisting, in part, of duplicate invoices and analyses of daily sales of members, and divulged such information to all the members of their association at open meetings or supplied the same upon request;
- (c) Employed accountants to examine and audit members' books to determine whether aforesaid reports of prices, quantities, and names of customers were true, and to detect violations of agreements;
- (d) Adopted and carried out through their prior "Garment Box Venture" and later "Garment Box Credit Bureau" committee, a plan of allocating to each member a percentage of the industry's total sales which, as agreed, was not to be exceeded, and violation of which subjected member to penalty of paying to the association 3 cents for each box sold in excess thereof, while member selling below his quota was reimbursed at the same rate for number of boxes sold below such quota;
- (e) Required each member to deposit a substantial sum of money with the association as a guarantee that he would abide by rules and regulations thereof, and pay dues at the rate of 1 cent for each box sold by him;
- (f) Collected from members and disbursed under said plan dues, assessments, and penalties through aforesaid committees, operated by its president and another director as trustees, under its manager's guidance;
- (g) Agreed not to, and refused, to sell garment boxes to any purchaser who bought from any assembler or dealer not a member of the association;
- (h) Allocated to certain members sales of boxes to certain purchasers, with the understanding that none of the others should sell to those whose purchases were so allotted; and
- (i) Purchased the business of some of their competitors who had sold garment boxes at less than the prices fixed, and induced and coerced others selling at less than such prices, to discontinue the business of selling such boxes;

With result that sale prices on garment boxes since February 1941, uniformly and simultaneously increased in excess of 100 percent, and customers, allocated as aforesaid, were forced thereby to purchase their requirements from the different respective members:

Held, That such acts and practices, under the circumstances set forth, hindered and prevented price competition between and among said members in the sale of garment boxes in commerce; placed in said members the power to control and enhance prices, and created in them a monopoly in the sale of said boxes in commerce; unreasonably restrained the same; and constituted unfair methods of competition in commerce.

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

Mr. Edward L. Smith for the Commission.

Mr. Benjamin S. Kirsh, of New York City, for respondents generally with the exception of—

Mr. Charles Kraft, of New York City, who appeared for Bilt-Rite Box Corp.; and

Mr. Charles Gertler, of Miami Beach, Fla., who appeared for Louis H. Clark.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Garment Box Manufacturers Association; Samuel Small, president, and Daniel Bellin, Samuel Small, Morris Bradhoff, Harry Siegel, Bernard N. Jaffe, and Henry Rosen, directors; Bilt-Rite Box Corporation; Chic Container Corporation; Excel Container Corporation; F & F Box Co.; Gates Container Corporation; Gem Corrugated Box Corporation; Independent Container Corporation; Rainbow Container Corporation; Small Bros. Container Corporation; Solid Container Corporation; Spear Box Co., Inc.; State Container Co.; United Box Corporation; York Box & Paper Corporation; Phineas Beck, trading as Beck Container Co.; J. Holman; Bernard N. Jaffe; Max Firsty, trading as M & F Box Co.; Louis H. Clark, trading as Interboro Container Co.; Samuel Goldstein, and Abraham Goldstein, trading as Merit Container Co.; Henry Rosen and Marvin A. Rosen, trading as Mutual Fibre Box Co.; Jerome Rosen and Henry Rosen, trading as Quick Service Box Co.; Irving Hellsell, trading as Royal Corrugated Box Co.; Joseph Barbash and Rose Barbash, trading as Sunshine Paper Box Co.; and Samuel L. Wallerstein, hereinafter 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, Garment Box Manufacturers Association, is a voluntary unincorporated association, whose membership is

Complaint

38 F. T. C.

composed of, and at all times since its organization, has been composed of, the respondents named in paragraphs 2 and 3 hereof, sometimes hereinafter referred to as respondent members, which said respondents are engaged in the manufacture and sale of garment boxes to wholesalers and retailers of garments who use such garment boxes in packaging and delivering garments when sold by them. It was organized in June 1940 or thereabouts, since which time its affairs have been managed by respondent, Samuel L. Wallerstein, and by its officers and directors, who, with said respondent, Samuel L. Wallerstein, in such management assisted the other respondents in entering into and carrying out the agreement, combination, understanding, and conspiracy described in paragraph 6 hereof, for which reason said Samuel L. Wallerstein and the officers of said respondent, Garment Box Manufacturers Association, are made respondents herein. Such officers and directors of said respondent, Garment Box Manufacturers Association, are now, and at all times since its organization have been, respondents, Samuel Small, president, and Daniel Bellin, Samuel Small, Morris Bradhoff, Harry Siegel, Bernard N. Jaffe and Henry Rosen, directors.

PAR. 2. The following-named respondent members, are corporations, with their principal places of business in New York City, N. Y., and are organized under the laws of the State of New York.

Names and addresses of respondents:

Bilt-Rite Box Corporation, 242 West Forty-first Street.

Chic Container Corporation, 129 West Twenty-seventh Street.

Excel Container Corporation, 527 West Thirty-fifth Street.

F & F Box Co., 514 West Thirty-sixth Street.

Gates Container Corporation, 152 West Twenty-fifth Street.

Gem Corrugated Box Corporation, 118 West Twenty-second Street.

Independent Container Corporation, 527 West Thirty-fifth Street.

Rainbow Container Corporation, 132 West Twenty-first Street.

Small Bros. Container Corporation, 498 Seventh Avenue.

Solid Container Corporation, 27 West Twenty-fourth Street.

Spear Box Company, Inc., 270 Eleventh Avenue.

State Container Co., 449 West Thirtieth Street.

United Box Corporation, 37 West Twentieth Street.

York Box & Paper Corporation, 630 West Forty-fourth Street.

PAR. 3. Respondent member, Phineas Beck, has his principal place of business at 152 West Twenty-fifth Street, New York City, and now and all times hereinafter mentioned has operated under the trade name, Beck Container Co. Respondent member, J. Holman, has his principal place of business at 314 West Thirty-sixth Street,

New York City. Respondent member, Louis H. Clark, has his principal place of business at 121 West Twentieth Street, New York City, and now and at all times hereinafter mentioned has operated under the trade name, Interboro Container Co. Respondent member, Bernard M. Jaffe, has his principal place of business at 114 West Twenty-seventh Street, New York City. Respondent member, Max Firsty, has his principal place of business at 433 West Thirty-fifth Street, New York City, and at all times hereinafter mentioned has operated under the trade name, M & F Box Co. Respondent members, Samuel Goldstein and Abraham Goldstein, are partners, and at all times hereinafter mentioned have operated under the name, Merit Container Co., with their principal place of business at 345 West Thirty-sixth Street, New York City. Respondent members, Henry Rosen and Marvin A. Rosen, are partners, and at all times hereinafter mentioned have operated under the name, Mutual Fibre Box Co., with their principal place of business at 1400 Broadway, New York City. Respondent members, Jerome Rosen and Henry Rosen, are partners, and at all times hereinafter mentioned have traded under the name, Quick Service Box Co., with their principal place of business located at 421 West Thirty-ninth Street, New York City. Respondent member, Irving Helsell, has his principal place of business at 22 West Twenty-first Street, New York City, and now and at all times hereinafter mentioned has operated under the name, Royal Corrugated Box Co. Respondent members, Joseph Barbash and Rose Barbash, have their principal place of business at 503 West Forty-third Street, New York City, and now and at all times hereinafter mentioned have operated under the trade name, Sunshine Paper Box Co.

PAR. 4. Respondent members named in paragraphs 2 and 3 hereof are now, and at all times hereinafter mentioned have been, engaged in the assembling and sale of garment boxes. In the course and conduct of their businesses all of the said respondents for more than 2 years last past have caused and still cause such garment boxes, when sold by them, to be transported in commerce from their respective places of business to, into, and through the various States of the United States and the District of Columbia to the purchasers thereof, some in the State of New York and others in other States of the United States and in the District of Columbia. Such purchasers use such garment boxes, so sold to them by said respondents, in packaging and delivering garments sold by such purchasers to their vendees located not only in the States in which such purchasers have their places of business but in various other States of the United States and in the District of Columbia. Such garment boxes are necessary for use in the delivery of garments sold by them to their

vendees. The amount of garment boxes assembled and sold by the respondents named in paragraphs 2 and 3 hereof constitutes, and at all times since 1940 has constituted, a substantial part of all of the garment boxes assembled and sold in the United States and many purchasers of garment boxes have no regular source of supply thereof excepting from the said respondents and since the organization of the said respondent, Garment Box Manufacturers Association, have had no regular source of supply of garment boxes excepting from said respondents.

PAR. 5. The respondents named in paragraphs 2 and 3 hereof were, prior to 1940, in competition with one another as to price in the sale of garment boxes 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 1940 and would now be in such competition with one another.

PAR. 6. In July 1940, or thereabouts, the respondents named in paragraphs 2 and 3 hereof for the purpose of eliminating price competition among themselves, entered into, through, and by respondent, Garment Box Manufacturers Association, and have since carried out and are still carrying out through and by respondent, Garment Box Manufacturers Association, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained and still fix and maintain, uniform prices to be, and which have been and are still being, exacted by them from their purchasers of garment boxes 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, the said respondents have concertedly and cooperatively done and performed, among other things, the following methods, acts and practices:

(a) By agreement, among themselves, have fixed and maintained, and still fix and maintain, uniform prices for garment boxes sold by them and by each of them;

(b) At meetings of respondent, Garment Box Manufacturers Association, have discussed and still discuss the prices at which the members thereof should sell garment boxes, and at such meetings arrive at and agree upon prices at which the members of said Association should sell such garment boxes;

(c) Through said respondent, Garment Box Manufacturers Association, have adopted and carried out and are still carrying out a plan of collecting and disseminating information with respect, among other things, to the quantities of, and prices at which the members of said

Association should sell and do sell their products, including the names of customers to whom such respondents should sell, and the quantities to be sold to each of such customers. A part of such information is in the form of duplicate invoices and daily sales analyses of respondent members, which such information is divulged to all of the members of said respondent Association to open meetings or supplied by respondent Association to its members upon their request;

(d) Through the respondent Association, have employed and still employ accountants to examine and audit their books for the purpose of determining whether the reports furnished by the members thereof as set out in subsection (c) hereof are true with respect to prices, quantities, and names of customers sold, and for the further purpose of detecting any violations of the agreements set out in subsections (a), (b), (c), (e), (f), (g), (h), and (i) hereof;

(e) Through the respondent Association, have adopted, and are carrying out, originally by means of a committee of respondent Association, known as Garment Box Joint Venture, and since the dissolution of that committee, by means of another committee of respondent Association, known as Garment Box Credit Bureau, a plan of allocating to each member of respondent Association a percentage or quota of the industry's total sales which they have agreed must not be exceeded by any member, which agreement, if violated by a member, subjects him to the penalty of paying to the respondent Association 3 cents for each box sold in excess of his quota, the member or members selling below his or their quotas being reimbursed at the same rate for the number of boxes sold by him or them below his or their quota;

(f) Have agreed to require and pursuant to such agreement have required each member and new member of the respondent Association to deposit a substantial sum of money with the respondent Association as a guarantee that the said member or new member will abide by the rules and regulations of the respondent Association, and pay dues at the rate of 1 cent for each box sold by said member;

(g) Have collected dues, assessments, and penalties from and disbursed to members under said plan set forth in subparagraph (e) herein through said committee of respondent Association known as Garment Box Joint Venture and Garment Box Credit Bureau, operated by respondents Samuel Small and Daniel J. Bellin as trustees under the guidance and direction of respondent Wallerstein;

(h) Have agreed not to sell garment boxes, and pursuant to such agreement, have refused to sell garment boxes to any purchaser or user thereof who buys or has bought garment boxes from any assembler or dealer thereof not a member of respondent Association;

(i) Have allotted to certain of respondent members to the exclusion of all of the other respondent members, sales to certain purchasers of garment boxes, with the agreement and understanding among themselves that none of the other respondent members shall sell garment boxes to purchasers and prospective purchasers whose purchases have been so allotted to the particular respondent members, to the exclusion of the other respondent members;

(j) Have purchased the business of some of their competitors who have sold garment boxes at less than the prices fixed as described herein, and have induced and coerced others selling at less than the prices so fixed to discontinue the business of selling garment boxes.

PAR. 7. As a result of the said agreement, combination, understanding, and conspiracy and the methods, acts, and practices engaged in by respondents pursuant thereto, as hereinbefore set forth, the sales prices on garment boxes since February 1941, uniformly and simultaneously increased in excess of 100 percent and customers of the respondent members are allocated among the various members of the respondent Association and are unable to purchase or obtain price quotations except from members of respondent Association from whom they have been making purchases in the past and said customers are thus forced to purchase their requirements of garment boxes from said respective members, as there is no other source of supply.

PAR. 8. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of garment boxes 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 garment boxes in such commerce; have unreasonably restrained such commerce in garment boxes, 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 June 26, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Garment Box Manufacturers Association; Samuel Small, as president, and Daniel Bellin, Samuel Small, Morris Bradhoff, Harry Siegel, Bernard N. Jaffe, and Henry Rosen, as directors of respondent, Garment Box Manufacturers Association; Bilt-Rite Box Corporation,

Chic Container Corporation, Excel Container Corporation, F & F Box Co., Gates Container Corporation, Gem Corrugated Box Corporation, Independent Container Corporation, Rainbow Container Corporation, Small Bros. Container Corporation, Solid Container Corporation, Spear Box Co., Inc., State Container Co., United Box Corporation, York Box and Paper Corporation, Phineas Beck, trading as Beck Container Co., J. Holman, Bernard N. Jaffe, Max Firsty, trading as M & F Box Co., Louis H. Clark, trading as Interboro Container Co., Samuel Goldstein and Abraham Goldstein, trading as Merit Container Co., Henry Rosen and Marvin A. Rosen, trading as Mutual Fibre Box Co., Jerome Rosen and Henry Rosen, trading as Quick Service Box Co., Irving Helsell, trading as Royal Corrugated Box Co., and Joseph Barbash and Rose Barbash, trading as Sunshine Paper Box Co., members; and Samuel L. Wallerstein, 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, the Commission, by order entered herein, granted the motion of all of the respondents except State Container Co. for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission.

A hearing was held in this matter on November 16, 1942, at which time testimony and other evidence were introduced in support of and in opposition to the allegations of complaint as to respondent State Container Co. 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 on said complaint, substitute answers, testimony, and other evidence, and report of the trial examiner upon the evidence (the filing of briefs having been waived and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Garment Box Manufacturers Association, hereinafter referred to as "respondent Association," is a voluntary unincorporated trade association, which was organized on or

about June 1940. The membership of said respondent Association, has at all times since its organization, been composed of the respondents hereinafter named, with the exception of State Container Co., who are hereinafter referred to as "respondent members." Said respondent members are engaged in the manufacture and sale of garment boxes to wholesalers and retailers of garments, who use such garment boxes in packaging and delivering garments when sold by them. Since the time of its organization, the respondent Association, has been managed by respondent, Samuel L. Wallerstein, and by its officers and directors, who, with said respondent, Samuel L. Wallerstein, in such management assisted the other respondents in entering into and carrying out the acts and practices hereinafter described. Such officers and directors of said respondent since its organization have been respondents, Samuel Small, president, and Daniel Bellin, Samuel Small, Morris Bradhoff, Harry Siegel, Bernard N. Jaffe, and Henry Rosen, directors.

PAR. 2. The following-named respondent members are corporations organized under the laws of the State of New York, with their principal places of business in the city of New York:

Names and addresses of respondents:

Bilt-Rite Box Corporation, 242 West Forty-first Street.

Chic Container Corporation, 129 West Twenty-seventh Street.

Excel Container Corporation, 527 West Thirty-fifth Street.

F & F Box Co., 514 West Thirty-sixth Street.

Gates Container Corporation, 152 West Twenty-fifth Street.

Gem Corrugated Box Corporation, 118 West Twenty-second Street.

Independent Container Corporation, 527 West Thirty-fifth Street.

Rainbow Container Corporation, 132 West Twenty-first Street.

Small Bros. Container Corporation, 498 Seventh Avenue.

Solid Container Corporation, 27 West Twenty-fourth Street.

Spear Box Co., Inc., 270 Eleventh Avenue.

United Box Corporation, 37 West Twentieth Street.

York Box & Paper Corporation, 630 West Forty-fourth Street.

In addition to the above-named corporate respondents, the following individuals and copartnerships were also respondent members of the Garment Box Manufacturers Association: Phineas Beck, an individual, trading as Beck Container Co., with his principal place of business at 152 West Twenty-fifth Street, New York, N. Y.; J. Holman, an individual, with his principal place of business at 314 West Thirty-sixth Street, New York, N. Y.; Louis H. Clark, an individual, trading

as Interboro Container Co., with his principal place of business at 121 West Twentieth Street, New York, N. Y.; Bernard N. Jaffe, an individual, with his principal place of business at 114 West Twenty-seventh Street, New York, N. Y.; Max Firsty, an individual, trading as M & F Box Co., with his principal place of business at 433 West Thirty-fifth Street, New York, N. Y.; Samuel Goldstein and Abraham Goldstein, copartners, trading as Merit Container Co., with their principal place of business at 345 West Thirty-sixth Street, New York, N. Y.; Henry Rosen and Marvin A. Rosen, copartners, trading as Mutual Fibre Box Co., with their principal place of business at 1400 Broadway, New York, N. Y.; Jerome Rosen and Henry Rosen, copartners, trading as Quick Service Box Co., with their principal place of business at 421 West Thirty-ninth Street, New York, N. Y.; Irving Hellsell, an individual, trading as Royal Corrugated Box Co., with his principal place of business at 22 West Twenty-first Street, New York, N. Y.; and Joseph Barbash and Rose Barbash, copartners, trading as Sunshine Paper Box Co., with their principal place of business at 503 West Forty-third Street, New York, N. Y.

The State Container Co. is a corporation which was organized on or about May 1, 1941, and during all the times of its corporate existence it was not a member of the Garment Box Manufacturers Association and did not participate in any of the acts and practices hereinafter described.

PAR. 3. All of said respondent members are now, and at all times hereinafter mentioned have been, engaged in the assembly and sale of garment boxes. In the course and conduct of their respective businesses, all of said respondents for several years last past have caused, and still cause, such garment boxes when sold by them to be transported in commerce from their respective places of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Such purchasers use such garment boxes so sold to them by said respondents in packaging and delivering garments sold by such purchasers to their vendees located not only in the States in which such purchasers have their places of business but in various other States of the United States and in the District of Columbia. Such garment boxes are necessary for use in the delivery of garments sold by them to their vendees. The amount of garment boxes assembled and sold by the respondents at all times since 1940 has constituted a substantial part of all the garment boxes assembled and sold in the United States, and many purchasers of garment boxes have no regular source of supply thereof except from the said respondents and, since the organization of said respondent Garment

Box Manufacturers Association, have had no regular source of supply of garment boxes excepting from said respondents.

PAR. 4. All of said respondent members were, prior to 1940, in competition with one another as to price in the sale of garment boxes between and among the various States of the United States and the District of Columbia and, but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since 1940, and would now, be in such competition with one another.

PAR. 5. In July 1940 or thereabouts the respondent members, for the purpose of eliminating price competition among themselves, entered into, through, and by respondent, Garment Box Manufacturers Association, and have since carried out and are still carrying out, through and by respondent, Garment Box Manufacturers Association, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained and still fix and maintain, uniform prices to be, and which have been and are still being, exacted by them from their purchasers of garment boxes 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, the said respondents have concertedly and cooperatively done and performed, among other things, the following methods, acts, and practices:

(a) By agreement among themselves have fixed and maintained, and still fix and maintain, uniform prices for garment boxes sold by them and by each of them.

(b) At meetings of respondent, Garment Box Manufacturers Association, have discussed, and still discuss, the prices at which the members thereof should sell garment boxes, and at such meetings arrive at and agree upon prices at which the members of said Association should sell such garment boxes.

(c) Through said respondent, Garment Box Manufacturers Association, have adopted and carried out, and are still carrying out, a plan of collecting and disseminating information with respect, among other things, to the quantities of, and prices at which, the members of said Association should sell and do sell their products, including the names of customers to whom such respondents should sell, and the quantities to be sold to each of such customers. A part of such information is in the form of duplicate invoices and daily sales analyses of respondent members, which such information is divulged to all of the members of said respondent Association at open

meetings or supplied by respondent, Association, to its members upon their request.

(d) Through the respondent, Association, have employed, and still employ, accountants to examine and audit their books for the purpose of determining whether the reports furnished by the members thereof in connection with their plan of collecting and disseminating information are true with respect to prices, quantities, and names of customers sold and for the further purpose of detecting any violations of any of the agreement described herein.

(e) Through the respondent, Association, have adopted, and are carrying out, originally by means of a committee of respondent, Association, known as "Garment Box Joint Venture," and since the dissolution of that committee, by means of another committee of respondent, Association, known as "Garment Box Credit Bureau," a plan of allocating to each member of respondent, Association, a percentage or quota of the industry's total sales which they have agreed must not be exceeded by any member, which agreement if violated by a member subjects him to the penalty of paying to the respondent, Association, 3 cents for each box sold in excess of his quota, the member or members selling below his or their quotas being reimbursed at the same rate for the number of boxes sold by him or them below his or their quota.

(f) Have agreed to require, and pursuant to such agreement have required, each member and new member of the respondent, Association, to deposit a substantial sum of money with the respondent, Association, as a guarantee that the said member or new member will abide by the rules and regulations of the respondent, Association, and pay dues at the rate of 1 cent for each box sold by said member.

(g) Have collected dues, assessments, and penalties from, and disbursed to, members under said plan hereinabove set forth through said committee of respondent, Association, known as Garment Box Joint Venture and Garment Box Credit Bureau operated by respondents, Samuel Small and Daniel Bellin, as trustees under the guidance and direction of the respondent Wallerstein.

(h) Have agreed not to sell garment boxes, and pursuant to such agreement have refused to sell garment boxes, to any purchaser or user thereof who buys or has bought garment boxes from any assembler or dealer thereof not a member of respondent, Association.

(i) Have allotted to certain of respondent members, to the exclusion of all of the other respondent members, sales to certain purchasers of garment boxes, with the agreement and understanding among themselves that none of the other respondent members shall sell garment boxes to purchasers and prospective purchasers whose purchases

have been so allotted to the particular respondent members, to the exclusion of the other respondent members.

(j) Have purchased the business of some of their competitors who have sold garment boxes at less than the prices fixed as described herein, and have induced and coerced others selling at less than the prices so fixed, to discontinue the business of selling garment boxes.

PAR. 6. As a result of the said agreement, combination, understanding, and conspiracy and the methods, acts, and practices engaged in by respondents pursuant thereto as hereinbefore set forth, the sales prices on garment boxes since February 1941, uniformly and simultaneously increased in excess of 100 percent, and customers of the respondent members are allocated among the various members of the respondent, Association, and are unable to purchase or obtain price quotations except from members of respondent, Association, from whom they have been making purchases in the past and said customers are thus forced to purchase their requirements of garment boxes from said respective members, as there is no other source of supply.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of garment boxes 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 garment boxes in such commerce; have unreasonably restrained such commerce in garment boxes; 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 State Container Co., in which answers said respondents 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 also upon testimony and other evidence in support of the allegations of said complaint and in opposition thereto as to respondent, State Container Co., taken before a trial examiner of the Commission theretofore duly designated by it, and report of the trial examiner upon the evidence (the filing of briefs having been

waived and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Garment Box Manufacturers Association, an unincorporated association, Bilt-Rite Box Corporation, a corporation, Chic Container Corporation, a corporation, Excel Container Corporation, a corporation, F & F Box Co., a corporation, Gates Container Corporation, a corporation, Gem Corrugated Box Corporation, a corporation, Independent Container Corporation, a corporation, Rainbow Container Corporation, a corporation, Small Bros. Container Corporation, a corporation, Solid Container Corporation, a corporation, Spear Box Co., Inc., a corporation, United Box Corporation, a corporation, York Box & Paper Corporation, a corporation, and their respective officers, representatives, agents, and employees; respondents, Phineas Beck, an individual, trading as Beck Container Co., J. Holman, an individual, Bernard N. Jaffe, an individual, Max Firsty, an individual, trading as M & F Box Co., Louis H. Clark, an individual, trading as Interboro Container Co., Samuel Goldstein and Abraham Goldstein, individuals, trading as Merit Container Co., Henry Rosen and Marvin A. Rosen, individuals, trading as Mutual Fibre Box Co., Jerome Rosen and Henry Rosen, individuals, trading as Quick Service Box Co., Irving Helsell, an individual, trading as Royal Corrugated Box Co., Joseph Barbash and Rose Barbash, individuals, trading as Sunshine Paper Box Co., Samuel L. Wallerstein, an individual, and their respective representatives, agents, and employees; and Samuel Small, individually, and as president and director, and respondents, Daniel Bellin, Morris Bradhoff, Harry Siegel, Bernard N. Jaffe, and Henry Rosen, individually, and as directors, of Garment Box Manufacturers Association, 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 garment boxes and other similar merchandise 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 planned 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 for garment boxes or adhering to or promising to adhere to prices so fixed.

2. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of respondent, Garment Box Manufacturers Association, or any other medium or agency concerning proposed or future prices at which respondents should sell garment boxes or other similar merchandise.

3. Exchanging, distributing, or relaying among respondent members or any of them or through respondent, Garment Box Manufacturers Association, or through any other medium or central agency duplicate invoices, daily sales analyses, or other information showing current or future prices, or information showing the current or future prices of any particular respondent.

4. Exchanging, distributing, or relaying among respondent members or any of them or through respondent, Garment Box Manufacturers Association, or through any other medium or central agency duplicate invoices, daily sales analyses, or other information which discloses to competing respondent members data on prices charged and quantities sold on individual sales to named customers, or information as to quantities of garment boxes sold by any respondent member to any particular customer or group of customers.

5. Fixing, determining, designating, or maintaining sales quotas or allocations of business among respondent members or formulating, promoting, placing in effect, or participating in any plan or policy to allocate or divide among respondent members or any of them the total business of the industry or any part thereof or any lot or piece of business or the business of any purchaser or purchasers.

6. Formulating, promoting, placing in effect, or participating in any plan or policy which provides for a penalty for exceeding any sales quota established by such plan or policy or for reimbursement for failing to sell such quota.

7. Adhering to or promising to adhere to any allocation or division of any lot or piece of business or the business of any given purchaser or purchasers by refusing to sell such purchasers or prospective purchasers so allotted to particular respondent members.

8. Coercing, inducing, or persuading, or attempting to coerce, induce, or persuade, respondent members to adhere to or maintain prices or sales quotas among respondent members by maintaining any agency, committee, or bureau as a disciplinary or punitive agency to enforce the provisions of any plan or policy with reference to the allocation of business among respondent members, or to collect or enforce payment of any assessment or penalty to cover violation of quota sales provided by such plan or policy.

9. Coercing, inducing, or persuading, or attempting to coerce, induce, or persuade, respondent members to adhere to or maintain prices or

sales quotas among respondent members by requiring the deposit of sums of money by respondent members to guarantee or assure the maintenance by such respondent members of any quota or allocation of business established by any plan or policy adopted by the respondent, Association, or the respondent members or by providing for the payment of a penalty by any respondent member who might exceed such quota or allocation of business so established.

10. Coercing, inducing, or persuading, or attempting to coerce, induce, or persuade, any competitor of respondent members who does not maintain the prices fixed by said respondent members to discontinue the business of selling garment boxes.

11. Refusing to sell or agreeing not to sell garment boxes to any purchaser or user thereof who buys or has bought garment boxes from any assembler, dealer, or distributor who is not a member of respondent, Association.

12. Authorizing or permitting the examination of the books and records of the respondent members by any agent of the respondent, Garment Box Manufacturers Association, or by any agent of the respondents or any of them to determine or check the quantity of garment boxes sold by any respondent member, the prices charged by such respondent member, and the extent to which any respondent member has or has not sold garment boxes within the quotas established or the extent to which such respondent member has or has not complied with any plan for allocation of sales.

13. Formulating or putting into operation any other practice or plan which has the purpose of or the tendency or effect of fixing prices for garment boxes, or otherwise restricting, restraining, or eliminating competition in the sale and distribution of garment boxes.

14. Employing or utilizing respondent, Garment Box Manufacturers Association, or any other medium or central agency as an instrument or 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 State Container 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
HYGIENIC CORPORATION OF AMERICA ET AL

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

Docket 3303. Complaint, Jan. 17, 1938—Decision, Apr. 15, 1943

Where a corporation, its two subsidiaries, and the principal stockholder of all three, doing business under the names of "American Health Association of Washington, D. C.," "Women's Advisory Bureau," "Women's Co-Operative Service," "Protex-U-Hygienic Service," "American Bureau of Hygiene," and "Surete Laboratories," engaged in the manufacture, and competitive interstate sale and distribution of medicinal preparations and appliances for women's use, which, designated generally as "Protex-U" and "Surete," consisted substantially of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, sold in sets and separately;

In advertising their said products through newspapers, periodicals, and other advertising material, including a set of six booklets entitled "The Happy Family Series," and booklets entitled "New Knowledge for Women" and "Feminine Secrets," dealing with prevention of conception—

- (a) Falsely represented, directly and by implication, that their said various products constituted competent and effective contraceptive agents;
- (b) Falsely represented that their said products possessed substantial therapeutic value in the treatment of ailments and diseases peculiar to women, particularly delayed menstruation, constituted a competent means for the destruction of germs in the female genital organs, and were effective prophylactics;
- (c) Represented, as aforesaid, that their said appliances, and particularly that designated vaginal diaphragm, would fit all female anatomies, and that vaginal syringe designated "Health Shield" might be used with safety by all women; facts being none of their said appliances would fit all female anatomies, and said "Health Shield" was regarded by physicians as potentially dangerous in that use thereof forced bacteria into the uterus; and

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

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

certifying that solicitor was enrolled as a "Nurse Member, Class A, in the American Health Association and has been appointed Visiting Nurse while engaged in Health Extension Activities * * *," and also issued badges of identification reading "American Health Association—Visiting Nurse Division—Washington, D. C.," to their solicitors who thereupon exhibited such cards, badges, and other advertising material through house-to-house solicitation for sale of said products; and

- (f) Represented that their business activities were conducted under the auspices or with the approval of the United States Public Health Service, and that their products had the approval of such service, that the "American Health Association" was a benevolent, nonprofit organization engaged in promoting the public health, and that their solicitors were nurses and qualified to advise women with respect to matters of health and sex hygiene, through their advertising literature and solicitors;

Facts being their said representations were false in their entirety; there was in fact no such organization as "American Health Association," which was merely a fictitious name used by them as one of their trade names; their business was conducted solely as a commercial enterprise for profit; and their solicitors were merely saleswomen, without training or experience as nurses;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that their said misrepresentations were true, and into the purchase of substantial quantities of their products and, as a result, of diverting trade unfairly to them from their competitors, including those who deal in products for women for legitimate hygienic use, treatment and prevention, and who do not misrepresent their products or business status; to the substantial injury of competition in commerce:

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

Before *Mr. Arthur F. Thomas, Mr. Randolph Preston, Mr. Edward E. Reardon, and Mr. Lewis C. Russell*, trial examiners.

Mr. William L. Taggart for the Commission.

Mr. August P. Coviello, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Hygienic Corporation of America, Hygienic Co. of America, Merrill-Saunders Co., Ltd., corporations, and Harold L. DeBar, individually and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a pro-

Complaint

36 F. T. C.

ceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

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

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

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

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

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

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

In the course and conduct of said business, respondents have been, and are, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and sale of similar products and other products intended and designed for similar use by women, in commerce among and between the various States of the United States and in the District of Columbia.

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

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

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

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

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

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

"Surete Antiseptic Ointment"—" * * * Germ life is positively arrested by its presence. * * * A valuable aid in preventing delayed menstruation. * * * Preserve the Body Beautiful Thru Feminine Hygiene * * * by use

Complaint

36 F. T. C.

of the Protex-U System * * * every woman is assured that she is fortified against all conditions * * * The Health Shield assures absolute cleanliness and also relief from congestion, delayed or painful menstruation. The Vaginal Antiseptic combats infection. * * * The distending douche assists the organs to regain their normal position and causes that tired depressed feeling to disappear. The after-rest adds to the permanency of the treatment. As a result, you will arise feeling like a young woman in the full bloom of youth * * *".

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

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

1. An effective antiseptic, effectively applied before exposure to prevent infection (pathogenic).
2. A vaginal syringe (Health Shield) far more effective than the ordinary in cleansing and preventing many menstrual disorders.
3. A douche powder that promotes healing and is not an irritant or merely a perfume carrier. These requirements are fully met in the Protex-U Ointment, Protex-U Health Shield and Protex-U Douche Powder, the following illustrations and simple directions fully explain their use.

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

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

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

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

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

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

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

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

Complaint

36 F. T. C.

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

NURSE-MEMBERSHIP APPLICATION

AMERICAN HEALTH ASSOCIATION,

Suite 402 Baltic Bldg., Washington, D. C.

Date ----- Feb. ---- 24 ----- 192 ----

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

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

----- Signed	----- Address	----- City	----- State
----- Employing Company		----- Vouched for by	

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

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

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

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

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

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

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

PAR. 9. The methods, acts, and practices of respondents herein set forth are all to the prejudice of the public and respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for the purposes," approved September 26, 1914.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 17, 1938, issued and thereafter served its complaint upon the respondents, Hygienic Corporation of America, Hygienic Co. of America, Merrill-Saunders Co., Ltd., corporations, and Harold L. DeBar, individually, and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, charging respondents with the use of unfair methods of competition in commerce in violation of the provisions of that 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 the attorney for the Commission, before trial examiners of the Commission theretofore duly designated by it (no evidence being offered by the 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 examiners upon the evidence, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being fully advised in the premises, on June 8, 1940, made its findings as to the facts and its conclusion based thereon, and issued its order requiring the respondents to cease and desist from the use of the unfair methods of competition charged in the complaint.

Subsequently, the respondents filed a petition setting forth that, through the alleged negligence or mistake of the attorney originally employed to represent them, they had not had an opportunity to offer evidence in opposition to the allegations of the complaint, and requesting that the proceeding be reopened in order that they might present such evidence. Upon consideration of this petition, and after testimony had been introduced by respondents in support thereof, the Commission on February 4, 1942, issued its order reopening the proceeding for the taking of such further testimony and other evidence as might be offered in support of the allegations of the complaint or in opposition thereto. Thereafter, additional hearings were held, at which the respondents introduced testimony and other evidence in opposition to the allegations of the complaint. Subsequently, the proceeding again came on for hearing before the Commission on the complaint, the answer thereto, the testimony and other evi-

dence introduced in both the original and supplemental hearings, the original and supplemental reports of the trial examiners upon the evidence, and the original and supplemental briefs in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission, being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its modified findings as to the facts and its conclusion based thereon:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hygienic Corporation of America, is a corporation, organized under the laws of the State of California. Respondents, Hygienic Co. of America and Merrill-Saunders Co., Ltd., are corporations, organized under the laws of the State of Delaware. The Hygienic Co. of America and the Merrill-Saunders Co., Ltd., are operated as subsidiaries of the Hygienic Corporation of America, and the Hygienic Corporation of America uses the names of these two corporations, as well as other names, as trade names for the carrying on of its business activities.

Respondent, Harold L. DeBar, is an individual, trading under the names of American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories. He is the principal stockholder of all of the corporate respondents, and directs and controls the business activities and sales policies of the corporate respondents.

All of the respondents formerly had their office and principal place of business at 5256-5258 South Hoover Street, Los Angeles, Calif. Their present address is 4306 Brighton Avenue, Los Angeles, Calif. All have acted in conjunction and cooperation with one another in carrying on the acts and practices herein set forth.

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

The respondents cause and have caused their products, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the

United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

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

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

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

The Three Point Scientific Method

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

1. An effective antiseptic, effectively applied before exposure to prevent infection (pathogenic).
2. A vaginal syringe (Health Shield) far more effective than the ordinary in cleansing and preventing many menstrual disorders.
3. A douche powder that promotes healing and is not an irritant or merely a perfume carrier. These requirements are fully met in the Protex-U-Ointment, Protex-U-Health Shield and Protex-U-Douche Powder, the following illustrations and simple directions fully explain their use.

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

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

"Surete Antiseptic Ointment"—" * * * Germ life is positively arrested by its presence. * * * A Valuable Aid in Preventing Delayed Menstruation. * * * Preserve the Body Beautiful Thru Feminine Hygiene * * * By

use of the Protex-U-System * * * every woman is assured that she is fortified against all conditions * * * The Health Shield assures absolute cleanliness and also relief from congestion, delayed or painful menstruation. The Vaginal Antiseptic combats infection. * * * The distending douche assists the organs to regain their normal position and causes that tired depressed feeling to disappear. The after-rest adds to the permanency of the treatment. As a result you will arise feeling like a young woman in the full bloom of youth!"

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

PAR. 5. Through the use of these representations, together with many other representations of a similar nature, the respondents have represented, directly and by implication, that their products constitute competent and effective contraceptive agents; that they possess substantial therapeutic value in the treatment of ailments and diseases peculiar to women, particularly delayed menstruation; that they constitute a competent and effective means or method for the destruction of germs in the female genital organs, and are competent and effective prophylactics; that respondents' appliances, particularly the vaginal diaphragm, will fit all female anatomies; and that the appliance designated "Health Shield" (vaginal syringe) may be used with safety by all women.

PAR. 6. The Commission finds that there is no basis in fact for the foregoing representations, and that such representations are false, deceptive, and misleading. Respondents' products do not constitute competent or effective contraceptive agents. They possess no therapeutic value in the treatment of delayed menstruation or any other ailments or diseases peculiar to women. They do not constitute a competent or effective means or method for the destructions of germs in the female genital organs, nor are they competent or effective prophylactics. Neither the vaginal diaphragm nor any other of respondents' appliances will fit all female anatomies. The appliance designated "Health Shield" (vaginal syringe) cannot be used with safety. This appliance is known generally by physicians as a "ballooning douche,"

Findings

36 F. T. C.

and is regarded by physicians as possessing dangerous potentialities in that its use may result in the forcing of bacteria from the vagina into the uterus.

PAR. 7. Much of the respondents' selling activity is thorough solicitors or saleswomen, who call on prospective purchasers. In order to obtain such solicitors, the respondents advertise in newspapers and other periodicals, and upon receiving inquiries from prospective solicitors the respondents send to such persons a blank form designated "Nurse-Membership Application." Such application is addressed to the "American Health Association, Washington, D. C.," and by means of this application the prospective solicitors apply for "Nurse Membership and appointment as Visiting Nurse in the American Health Association." The application further provides that:

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

The respondents, upon receiving such applications, issue to the solicitor a card designated "Certificate of Membership" in the "American Health Association, Visiting Nurse Division." This card certifies that the solicitor is enrolled as a "Nurse Member, Class A, in the American Health Association and has been appointed Visiting Nurse while engaged in Health Extension Activities * * *." The respondents also issue to their solicitors badges of identification reading "American Health Association—Visiting Nurse Division—Washington, D. C." Upon receiving the identification card and badge, the solicitor undertakes the work of selling respondents' products by making house-to-house calls on prospective purchasers. In contacting prospective purchasers and soliciting sales, the solicitor exhibits the card and badge and uses circulars, pamphlets, and other advertising material supplied by the respondents.

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

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

this special campaign to bring the vital sex truths regarding herself to every wife and mother as soon as possible.

But, what troubles me most is the fact that the need throughout the entire country is so great, so huge, so tremendous, that it is impossible for the American Health Association, as for any other benevolent non-profit organization, to equip enough of us nurses [to reach the millions and millions of wives]¹ who are just as needy but who are living on a farm, in a small town or even in a larger city where no staff of visiting nurses has yet been organized. To those women we have to bring this message, which we two are privileged to talk over in person, by mail to the best of our ability * * *.

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

PAR. 9. The Commission finds that these representations are false in their entirety. Neither respondents' activities nor their products are sponsored or approved by the United States Public Health Service or by any public health service. There is, in fact, no such organization as respondents' "American Health Association." This name is merely a fictitious name used by the respondents as one of their trade names. Respondents' business is in no sense a benevolent or nonprofit enterprise, but is a business conducted solely as a commercial enterprise and for the profit of respondents. The respondents' solicitors are not nurses and are not qualified to advise women as to matters of health or sex hygiene. They are merely saleswomen, and have no training or experience as nurses.

PAR. 10. The use by the respondents of the false and misleading statements and representations herein set forth has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations are true, and into the purchase of substantial quantities of respondents' products. As a result thereof, trade has been diverted unfairly to the respondents from their competitors, among whom are those who do not misrepresent their products or their business status, and in consequence, substantial injury has been done and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

¹ See ante, p. 509.

Order

86 F. T. C.

CONCLUSION

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

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 respondents, 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, original and supplemental reports of the trial examiners upon the evidence, and original and supplemental briefs in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission having made its modified findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Hygienic Corporation of America, Hygienic Co. of America, and Merrill-Saunders Co., Ltd., corporations, and their officers, and Harold L. DeBar, individually, and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, or trading under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' so-called feminine hygiene preparations and appliances now designated as "Protex-U" and "Surete" and consisting principally of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, whether sold together or separately, or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, or any other appliance possessing substantially similar characteristics, whether sold under the same name or under any other name, do forthwith cease and desist from: .

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

2. Representing, directly or by implication, that any of said preparations or appliances, whether used alone or in conjunction with .

any other of said preparations or appliances, possesses any therapeutic value in the treatment of delayed menstruation or any other ailment or disease peculiar to women.

3. Representing, directly or by implication, that any of said preparations or appliances, whether used alone or in conjunction with any other of said preparations or appliances, constitutes a competent or effective means or method for the destruction of germs in the female genital organs, or constitutes a competent or effective prophylactic.

4. Representing, directly or by implication, that respondents' appliances will fit all female anatomies.

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

6. Representing, directly or by implication, that the respondents or their business activities are connected in any way with, or that any of respondents' products is approved by, the United States Public Health Service or any public health service.

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

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

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

IN THE MATTER OF

LEO GREENBERG, TRADING AS BUREAU OF RESEARCH,
RECLASSIFICATION DEPARTMENT, AND WILLIAM
EDGAR SPICERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4810. Complaint, Aug. 12, 1942—Decision, Apr. 22, 1943*

Where an individual, engaged in interstate sale and distribution of printed mailing cards for use by collection agencies, merchants, and others in obtaining information concerning their debtors, which consisted of two perforated cards to be used, as below described, in mailing on one a request for information to the debtor or a person acquainted therewith, and in the supplying, on the other, of information pertaining to the debtor's affairs, for return to said individual's associate, as below set forth—

- (a) Represented, and placed in the hands of his customers a means of representing to their debtors and others, that the request for information came from an agency or branch of the United States Government, through displaying on such cards the words "Bureau of Research, Reclassification Department," along with the words "Bond Building, Washington, D. C.," to which the information cards were to be returned; setting forth similar words and "Employment Division, Dept. 303" on the request for information card, advising the debtor that the Bureau requested the information for the purpose of reclassifying his present employment, that all answers must be correct and returned within 5 days, and that the classification "would be permanent until new employment is secured"; and setting forth on the reverse side such matter as "Present Classification No. D 0000," and under the words "Do Not Write Below This Line"—preceded by arrangement for full information as to the debtor's name, address, occupation, and employment—such words as "Reclassified as follows—Classification Number—and Department Signature"; and through similar cards to be sent to a person believed to have information concerning the debtor;

The facts being that the request did not come from the Government but from private persons; said "Bureau of Research, Reclassification Department" was merely the trade name employed by said individual; and "Bond Building, Washington, D. C." was the address of said associate; and

Where said associate of said individual in the city of Washington, to whom he sent said cards for mailing and who, upon having the cards and information returned to him at said "Bureau of Research," Bond Building, Washington, D. C., forwarded the same to said individual, to be by him sent on to his customers with the information as to their debtors—

- (b) Similarly falsely represented to such customers and debtors that the request for information came from an agency or branch of the Government, and, through returning to said individual information concerning debtors, secured as aforesaid, assisted in the fruition of the purpose for which the original misrepresentation was made by individual and his customers, and thus participated actively in the acts and practices in question;

With tendency and capacity—notwithstanding ultimate insertion of word “Independent” preceding “Bureau” on the reverse of the addressee side of the card by said individual—to engender in the minds of a substantial number of persons the mistaken belief that the aforesaid cards emanated from the United States Government or some branch thereof, thereby inducing such persons to give information which otherwise they might not have supplied: *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. J. Earl Cox*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Mr. Jerry Nemer, of Los Angeles, Calif., for Leo Greenberg, and along with—

Mr. John Lewis Smith, of Washington, D. C., for William Edgar Spicer.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Leo Greenberg, individually, and trading as Bureau of Research, Reclassification Department, and William Edgar Spicer, an individual, hereinafter referred to as the respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Leo Greenberg, is an individual, who in the commission of the acts hereinafter alleged uses the name Bureau of Research, Reclassification Department, and who has his office and principal place of business at 215 West Fifth Street in the city of Los Angeles, State of California. The respondent, William Edgar Spicer, is an individual, whose office and principal place of business is located at 302 Bond Building, in the city of Washington, District of Columbia.

PAR. 2. The respondent, Leo Greenberg, is now and for more than 6 months last past, has been engaged in the business of selling printed mailing cards. Said respondent causes said cards when sold to be transported from his place of business in the State of California to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Said respondent, Greenberg, maintains and at all times herein mentioned 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.

Complaint

36 F. T. C.

The said mailing cards sold and transported by the respondent, Greenberg, as heretofore alleged, are designed and intended to be used by collection agencies, merchants, and others to whom they are sold in obtaining information concerning the purchasers' debtors and are of two types. One type on which a capital letter "D" is printed, is used when the debtor himself is addressed; the other type on which a capital letter "R" is printed is used when some person other than the debtor is requested to give information. Said mailing cards are made up of units composed of two cards separated by a perforated line, designed to enable the addressee of one of the two cards, hereinafter referred to as the debtor card, to detach the other card, hereinafter referred to as the information card, which is self-addressed, and thereon give certain information requested on the card addressed to him. The debtor card is addressed to the debtor at his last known address or to someone likely to have information concerning him, by the creditor or collection agency or other purchaser of the cards. The unit composed of two cards is then forwarded to the respondent, William Edgar Spicer, at his said place of business in the city of Washington, District of Columbia, and is mailed to him from the city of Washington, District of Columbia, to the person and to the address placed on the debtor card by the purchaser. When the debtor or other informant responds to the request for information contained on the debtor card, he detaches the information card and mails it with the information requested. Said information card has already been previously addressed to "Bureau of Research, Reclassification Department, Bond Building, Suite 302, Washington, D. C." Said information card so addressed is delivered by the Post Office Department to respondent, Spicer. Said Spicer then forwards the information card with the information thereon supplied from Washington, D. C., to respondent, Greenberg, in Los Angeles, Calif. Respondent, Greenberg, then returns the information card and the information so forwarded to the original purchaser of the cards.

PAR. 3. The respondent, Leo Greenberg, in the course of his said business and for the purpose of inducing the sale of his said products, causes the said mailing cards transported by him as heretofore alleged, to be prepared and printed in the manner hereinafter set forth. The said type of cards bearing a capital letter "D," in the upper left hand corner of the address side of the debtor card, contains the following return address:

Bureau of Research
Reclassification Department
Bond Building
Washington, D. C.

520

Complaint

The reverse side of the said debtor card contains the words:

Bureau of Research
Bond Building
Washington, D. C.

Employment Division Department 301 .

M

For the purpose of reclassifying your present employment this Bureau requests you to answer all questions on the attached reply card.

All answers must be correct and be returned within a period of five days.

This classification will be permanent until new employment is secured.

The information card is addressed as follows:

Bureau of Research
Reclassification Department
Bond Building, Suite 302
Washington, D. C.

The reverse side of the information card reads as follows:

PRESENT CLASSIFICATION No. D000

Fill In Completely Print Clearly

Full Name _____

Address _____ City _____ State _____

Previous Occupation _____ Present Occupation _____

Unskilled ☐ Skilled ☐ Clerical ☐ Executive ☐

Special Qualifications (Define any other types of work you may be qualified to do) _____

Now employed by _____

Address _____ City _____ State _____

Do Not Write Below This Line

Reclassified as follows

Classification Number

Department Signature

The said type of card bearing a capital letter "R" is in all respects substantially the same as heretofore alleged except that the side of the debtor card opposite the address reads as follows:

Bureau of Research,
Bond Building,
Washington, D. C.

Employment Division Department 301

This Bureau is advised that you can verify certain employment qualifications of

For the purpose of reclassifying his or her proper employment reclassification.

All answers must be correct and be returned within five days.

This classification will be permanent until new employment is secured.

By the use of the aforesaid mailing cards prepared and printed as aforesaid the respondent, Leo Greenberg, falsely represents and places in the hands of his customers a means of falsely representing to said customers' debtors and others to whom said cards are addressed by said customers that the request for information comes from an agency or branch of the Government of the United States. The respondent, Spicer, by mailing the said cards to the debtor—addressees, or other persons from whom information is requested—makes the same representation and by returning to the respondent, Greenberg, the information obtained from debtors or other informants assists in the fruition of the purpose for which the original misrepresentation was made by respondent, Greenberg, and his customers and in so doing is guilty of an unfair and deceptive act and practice in commerce among and between the various States of the United States.

The said representation is false and misleading. In truth and in fact neither the request for information nor the said mailing cards come from the Government of the United States or any branch or agency thereof, but are the device of private persons and agencies used for the purpose of obtaining information for their own uses.

Many persons who receive the aforesaid mailing cards, which request information, believe said mailing cards come from the Government of the United States or from some branch or agency thereof and by reason of such belief give information which they would not otherwise supply. Many agencies of the Government of the United States distribute, and for some time past have distributed, vocational questionnaires similar to those used by respondents. Such questionnaires are and have been distributed by the Selective Service System among others. Among the persons receiving said mailing cards and requests for information are many subject to the provisions of the Selective Service and Training Act of 1940 as amended, who believe that, or are doubtful as to whether, said mailing cards and requests for information have been sent to them under the provisions of said act. As a result of such beliefs and such doubts, many inquiries, both in person and by mail, are addressed to the local boards and other divisions of said Selective Service System and correspondence and other effort on the part of the various divisions of said Selective Service System, the Army of the United States and other governmental divisions and agencies are made necessary.

PAR. 4. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of the United States Government and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 12, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Leo Greenberg, individually, and trading as Bureau of Research, Reclassification Department, and William Edgar Spicer, individually, 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 to the complaint, a stipulation as to the facts was entered into between respondent, Leo Greenberg, through his attorney, and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provided, subject to the approval of the Commission, that the statement of facts set forth in such stipulation might be made a part of the record herein and might be taken as the facts in this proceeding in lieu of evidence in support of or in opposition to the charge stated in the complaint, insofar as such charges related to respondent Greenberg. The stipulation provided further that the Commission might proceed upon such statement of facts to make its report as to respondent, Greenberg, 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 as to respondent, Greenberg, without the presentation of argument or the filing of briefs.

Subsequently, at a hearing held before a trial examiner of the Commission theretofore duly designated by it, respondent, William Edgar Spicer, through his attorney, joined in the stipulation theretofore entered into by respondent, Leo Greenberg, and the Assistant Chief Counsel for the Commission, and waived any further proceedings, including the taking of testimony, the filing of briefs, and the presentation of oral argument.

Thereafter, the proceeding came on for final hearing before the Commission upon the complaint, the answers thereto, and the stipulation as to the facts (such stipulation having been approved and accepted by 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 based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Leo Greenberg, is an individual, who in the course of his business hereinafter described, uses the name "Bureau of Research, Reclassification Department," and has his office

Findings

36 F. T. C.

and principal place of business at 215 West Fifth Street, in the city of Los Angeles, State of California. Respondent, William Edgar Spicer, is an individual, whose office and principal place of business is located at 302 Bond Building, city of Washington, District of Columbia.

PAR. 2. Respondent, Leo Greenberg, is now and for more than 6 months last past has been engaged in the business of selling printed mailing cards. Said respondent causes his cards, when sold, to be transported from his place of business in the State of California to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondent Greenberg maintains, and at all times mentioned herein 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.

The mailing cards sold and transported by the respondent, Greenberg, as stated herein, are designed and intended to be used by collection agencies, merchants, and others to whom they are sold in obtaining information concerning the purchasers' debtors, and are of two types. One type, on which a capital letter "D" is printed, is used when the debtor himself is addressed; the other type, on which a capital letter "R" is printed, is used when some person other than the debtor is requested to give information. The mailing cards are made up of units composed of two cards separated by a perforated line, designed to enable the addressee of one of the two cards (hereinafter referred to as the debtor card) to detach the other card (hereinafter referred to as the information card), which is self-addressed, and thereon give certain information requested on the card addressed to him. The debtor card is addressed by the creditor, collection agency, or other purchaser of the cards to the debtor at his last known address, or to someone likely to have information concerning him. The unit composed of two cards is then forwarded to the respondent, William Edgar Spicer, at his place of business in the city of Washington, District of Columbia, and is mailed by him from the city of Washington to the person and to the address placed on the debtor card by the purchaser. The cards are uniformly sent through regular United States mail, with postage stamps attached, and at no time has any Government frank or any marking simulating such a frank been used.

When the debtor or other informant responds to the request for information contained on the debtor card, he fills in the blank spaces on the information card, detaches such card from the debtor card and mails it to the address given thereon, to-wit, "Bureau of Research,

520

Findings

Reclassification Department, Bond Building, Suite 302, Washington, D. C.," such address having previously been placed on the card by respondent, Greenberg. In due course the information card is delivered by the Post Office Department to respondent, Spicer, who then forwards the card from Washington, D. C., to respondent, Greenberg, in Los Angeles, Calif. Respondent, Greenberg, then returns the information card and the information so forwarded to the purchaser of the card.

PAR. 3. Respondent, Greenberg, in the course and conduct of his business, causes the mailing cards to be prepared and printed in the manner hereinafter set forth. The type of card bearing a capital letter "D" contains the following return address in the upper left-hand corner of the address side of the debtor card:

Bureau of Research
Reclassification Department
Bond Building
Washington, D. C.

The reverse side of the debtor card contains the following:

BUREAU OF RESEARCH
Bond Building
Washington, D. C.

Employment Division Department 301

M-----

For the purpose of reclassifying your present employment this Bureau requests you to answer all questions on the attached reply card.

All answers must be correct and be returned within a period of five days. This classification will be permanent until new employment is secured.

The information card is addressed as follows:

Bureau of Research
Reclassification Department
Bond Building, Suite 302
Washington, D. C.

The reverse side of the information card reads as follows:

PRESENT CLASSIFICATION No. D 0000

Fill in Completely Print Clearly

Full Name-----

Address----- City----- State-----

Previous Occupation----- Present Occupation-----

Unskilled ☐ Skilled ☐ Clerical ☐ Executive ☐

Special Qualifications (Define any other types of work you may be qualified to do)

Findings

36 F. T. C.

Now employed by-----

Address-----City-----State-----

Do Not Write Below This Line

Reclassified as follows-----

Classification Number-----

Department Signature-----

The type of card bearing a capital letter "R" is in all respects substantially the same as hereinabove set forth, except that the side of the debtor card opposite the address reads as follows:

BUREAU OF RESEARCH, RECLASSIFICATION DEPT.

Bond Building

Washington, D. C.

Employment Division

Department 301

This Bureau is advised that you can verify certain employment qualifications of-----for the purpose of re-classifying his or her proper employment re-classification.

This classification will be permanent until new employment is secured.

PAR. 4. By the use of these mailing cards, prepared and printed as set forth above, respondent, Greenberg, represents and places in the hands of his customers a means of representing to such customers' debtors and others that the request for information comes from any agency or branch of the Government of the United States.

In truth and in fact, such request for information does not come from the Government of the United States or any branch or agency thereof, but is a device employed by private persons and agencies for their own use. The Commission therefore finds that such representation is false and misleading.

PAR. 5. Respondent, Spicer, by mailing the cards to the debtor-addresses or other persons from whom information is requested, makes the same representation and, by returning to respondent, Greenberg, the information obtained from debtors or other informants, assists in the fruition of the purpose for which the original misrepresentation is made by respondent, Greenberg, and his customers. Respondent, Spicer, thus participates actively in the acts and practices herein described.

PAR. 6. Respondents' acts and practices have the tendency and capacity to engender in the minds of a substantial number of persons the erroneous and mistaken belief that the aforesaid cards emanate from the Government of the United States or from some branch or agency thereof, and the tendency and capacity to cause such persons, by reason thereof, to give information which otherwise they might not supply.

Prior to the time when the matter was taken up with respondent Greenberg by investigators of the Federal Trade Commission, respondent, Greenberg, changed the cards to the extent of inserting the word "Independent" immediately before the word "Bureau" on the reverse of the addressee side thereof. The Commission finds, however, that this change did not alter the cards in any material respect, and that it was wholly insufficient to correct the false and misleading impression created by the cards and by the methods employed by respondents.

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 respondents, and a stipulation as to the facts entered into between respondents and Richard P. Whiteley, Assistant Chief Counsel for the Commission (such stipulation having been approved and accepted by the Commission); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Leo Greenberg, individually, and trading as "Bureau of Research, Reclassification Department," or trading under any other name, and William Edgar Spicer, 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' mailing cards or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

1. Using the words "Bureau of Research, Reclassification Department," alone or in connection or conjunction with any other word or words, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents' business has any connection with the United States Government, or that the information sought by respondents or their customers is for the use of the United States Government or any branch or agency thereof.

Order

33 F. T. C.

2. Representing, directly or by implication, that the information sought through respondents' mailing cards or other material is for the purpose of classifying or reclassifying any person with respect to employment.

3. Using, or placing in the hands of others for use, mailing cards or other material which represent, directly or by implication, that respondents' business is other than that of obtaining information for use in the collection of debts, or that the information sought through such cards or other material is for any purpose other than for use in the collection of debts.

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
POW-A-TAN MEDICINE COMPANY

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

Docket 4817. Complaint, Aug. 18, 1942—Decision, Apr. 22, 1943

Where a corporation, engaged in interstate sale and distribution of its "Pow-A-Tan Herb Tonic" for treatment of various ailments and diseases; in advertisements in newspapers and periodicals, radio broadcasts, circulars, leaflets and pamphlets, and other advertising literature, directly and by implication—

(a) Represented that said preparation was a cure or remedy and competent and effective treatment for all common human ailments, including neuritis, arthritis, rheumatism, indigestion, gas and bloating, bad taste, sick headache, tired-out feeling and general run-down condition, and female complaints;

The facts being said preparation was essentially a laxative; its therapeutic value in the treatment of gas and bloating, piles, biliousness, bad taste, and sick headache was limited to such temporary relief as might be afforded by a laxative when such conditions were caused by constipation, and similarly in case of latter condition itself; and it was without therapeutic value in the treatment of the other conditions set forth above;

(b) Falsely represented that use thereof would prevent such diseases and ailments as cold, appendicitis, tuberculosis, catarrh, typhoid, and other contagious and acute diseases;

(c) Represented that \$1 was the regular price for its quart-size package, and that an offer to sell three for \$1 was special and limited; when in fact the latter was its regular and customary price;

(d) Represented falsely, through use of designation "tonic" in its brand name of its said product, that it was a general tonic; when it was not, as generally understood, and produced no such effect; and

(e) Failed to reveal facts material in the light of its aforesaid representations and with respect to the consequences which might result from use thereof under prescribed or usual conditions, in that, as a laxative, it was potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis, and in that frequent or continued use might result in dependence on laxatives;

With effect of misleading a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby inducing its purchase of such preparation:

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

Mr. 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

Complaint

36 F. T. C.

Trade Commission, having reason to believe that Pow-A-Tan Medicine 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, Pow-A-Tan Medicine Co., is a corporation, organized and existing under and by virtue of the laws of the State of West Virginia with its principal office and place of business located at 825 Fourth Avenue, Huntington, W. Va.

PAR. 2. The respondent is now, and has been for several years last past, engaged in selling and distributing a certain medicinal preparation which it designates "Powatan Herb Tonic," recommended for use in the treatment of various human ailments and diseases. Respondent causes said medicinal preparation, when sold, to be transported from its place of business in the State of West Virginia 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 its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

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

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

If you are suffering from any common ailment regardless of how long you have suffered or what you have tried in the past * * * we want you to try our famous Powatan Herb Tonic while you can do so at our expense.

If you will mail \$1 check or money order to Pow-A-Tan, spelled P-O-W-A-T-A-N, in care of this station we will mail you three regular \$1 quart size packages of famous Powatan Herb Tonic * * *

If you are suffering like thousands of others this morning with neuritis, arthritis, rheumatism, indigestion, gas and bloatiness, if you don't sleep at night like other folks do, and can't eat the things you like to eat—If you need a good builder upper—Let me recommend famous Powatan Herb Tonic. Folks all over this part of the country are sending in testimonials telling of the wonderful results they have received since taking Famous Powatan Herb Tonic.

Relieves constipation, piles, biliousness, la grippe and colds in one day, or no cost.

Relieves weakness, tired out feeling and general run-down condition or no pay.

Relieves pain in the neck, shoulders, side, back or hips in one day, or money back.

Relieves bilious or sick headache in two hours; heartburn and palpitation of heart at once; sick stomach, belching, gas on stomach at once, or no pay.

Relieves lumbago and rheumatism; also female complaints or your cash refunded.

IT ACTS LIKE MAGIC

Do you get up in the morning feeling worse than when you went to bed? Blue? Look on the dark side of everything? Worry about trifles? Tired? Lazy? Mouth taste bad? Probably you are simply a little bilious from something that did not agree with you; liver a little lazy. Take Pow-A-Tan Herbs for a time and see if you don't lose all those unpleasant symptoms.

A person whose liver is acting perfectly will seldom have colds; if the bowels act perfectly, appendicitis is improbable; with perfectly acting bowels and liver, the germs of tuberculosis, cold, catarrh, typhoid, and other forms of contagious or acute diseases seldom obtain a foothold.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent represents, directly and by implication, that said preparation is a cure or remedy for and constitutes a competent and effective treatment for all common human ailments; that it is a cure or remedy for and constitutes a competent and effective treatment for neuritis, arthritis, rheumatism, indigestion, gas and bloatiness, constipation, piles, biliousness, la grippe, colds, weakness, tired out feeling and general run down condition, ailments and disorders of the liver, bad taste in the mouth, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, sick headache, belching, gas on stomach, sick stomach, lumbago, rheumatism, and female complaints; that the use of said preparation will effectively prevent such diseases and conditions as cold, appendicitis, tuberculosis, catarrh, typhoid, and other contagious and acute diseases; that \$1 is the regular price for the quart size package of respondent's product and that an offer to sell three such packages for \$1 is a special and limited offer. Through the use of the designation "Powatan Herb Tonic" respondent represents its said product is a general tonic and produces a tonic action on the body.

Complaint

36 F. T. O.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's medicinal preparation is not a cure or remedy for neuritis, arthritis, rheumatism, indigestion, gas and bloatiness, constipation, piles, biliousness, la grippe, colds, weakness, tired out feeling and general run down condition, ailments and disorders of the liver, bad taste in the mouth, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, sick headache, belching, gas on stomach, sick stomach, lumbago, and female complaints. It will not prevent such diseases and conditions as colds, appendicitis, tuberculosis, catarrh, typhoid, and other contagious and acute diseases. Said preparation is essentially a laxative, and has no therapeutic value in the treatment of neuritis, arthritis, rheumatism, indigestion, la grippe, colds, weakness, tired out feeling and general run down conditions, ailments and disorders of the liver, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, lumbago and female complaints, and has no therapeutic value in the treatment of gas and bloatiness, piles, biliousness, bad taste in the mouth and sick headache in excess of such temporary relief as may be afforded by a laxative when such symptoms or conditions are due to or caused by constipation, and has no therapeutic value in the treatment of constipation in excess of affording temporary relief. The regular and customary price of the quart size package of respondent's product is not \$1 and the offer to sell such packages for \$1 is not a special or limited offer but on the contrary is the regular and customary price in such quantity lots generally available to the public. Respondent's product is not a tonic as this term is generally understood and produces no general tonic effect on the body.

PAR. 6. 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, respondent's said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations and others of similar nature, disseminated as aforesaid, has had, and now has, the tendency and capacity to and does, mislead a substantial portion of the purchasing

public into the erroneous and mistaken belief that such statements, representations, and advertisements are true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said preparation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 18, 1942, issued and thereafter served its complaint in this proceeding upon the respondent, Pow-A-Tan Medicine 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. Subsequently respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Pow-A-Tan Medicine Co., is a corporation, organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 825 Fourth Avenue, Huntington, W. Va.

PAR. 2. The respondent, is now, and has been for several years last past, engaged in selling and distributing a certain medicinal preparation which it designates "Powatan Herb Tonic," recommended for use in the treatment of various human ailments and diseases. Respondent causes said medicinal preparation, when sold, to be transported from its place of business in the State of West Virginia 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 its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

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

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

If you are suffering from any common ailment regardless of how long you have suffered or what you have tried in the past * * * we want you to try out famous Powatan Herb Tonic while you can do so at our expense.

If you will mail \$1 check or money order to Pow-A-Tan, spelled P-O-W-A-T-A-N, in care of this station we will mail you three regular \$1 quart size packages of famous Powatan Herb Tonic * * *

If you are suffering like thousands of others this morning with neuritis, arthritis, rheumatism, indigestion, gas and bloating, if you don't sleep at night like other folks do, and can't eat the things you like to eat—If you need a good builder upper—Let me recommend famous Powatan Herb Tonic. Folks all over this part of the country are sending in testimonials telling of the wonderful results they have received since taking Famous Powatan Herb Tonic.

Relieves constipation, piles, biliousness, in grippe and colds in one day, or no cost.

Relieves weakness, tired out feeling and general run-down condition or no pay.

Relieves pain in the neck, shoulders, side, back or hips in one day, or money back.

Relieves bilious or sick headache in two hours; heartburn and palpitation of heart at once; sick stomach, belching, gas on stomach at once, or no pay.

Relieves lumbago and rheumatism; also female complaints or your cash refunded.

IT ACTS LIKE MAGIC

Do you get up in the morning feeling worse than when you went to bed? Blue? Look on the dark side of everything? Worry about trifles? Tired? Lazy? Mouth taste bad? Probably you are simply a little bilious from something that did not agree with you; liver a little lazy. Take POW-A-TAN HERBS for a time and see if you don't lose all those unpleasant symptoms.

A person whose liver is acting perfectly will seldom have colds; if the bowels act perfectly, appendicitis is improbable; with perfectly acting bowels and liver, the germs of tuberculosis, cold catarrh, typhoid, and other forms of contagious or acute diseases seldom obtain a foothold.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent represents, directly and by implication, that said preparation is a cure or remedy for and constitutes a competent and effective treatment for all common human ailments; that it is a cure or remedy for and constitutes a competent and effective treatment for neuritis, arthritis, rheumatism, indigestion, gas and bloating, constipation, piles, biliousness, la grippe, colds, weakness, tired out feeling and general run down condition, ailments and disorders of the liver, bad taste in the mouth, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, sick headache, belching, gas on stomach, sick stomach, lumbago, and female complaints; that the use of said preparation will effectively prevent such diseases and conditions as cold, appendicitis, tuberculosis, catarrh, typhoid, and other contagious and acute diseases; that \$1 is the regular price for the quart size package of respondent's product and that an offer to sell three such packages for \$1 is a special and limited offer. Through the use of the designation "Powatan Herb Tonic" respondent represents its said product is a general tonic and produces a tonic action on the body.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's medicinal preparation is not a cure or remedy for neuritis, arthritis, rheumatism, indigestion, gas and bloating, constipation, piles, biliousness, la grippe, colds, weakness, tired out feeling and general run down condition, ailments and disorders of the liver, bad taste in the mouth, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, sick headache, belching, gas on stomach, sick stomach, lumbago and female complaints. It will not prevent such diseases and conditions as colds, appendicitis, tuberculosis, catarrh, typhoid and other contagious and acute diseases. Said preparation is essentially a laxative, and has no therapeutic value in the treatment of neuritis, arthritis, rheumatism, indigestion, la grippe, colds, weakness, tired out feeling and general run down conditions, ailments and disorders of the liver, pains in the neck, shoulders, side, back and hips, heartburn and palpitation of the heart, lumbago, and female complaints, and has no therapeutic value in the treatment of gas and bloating, piles, biliousness, bad taste in the mouth and sick

headache in excess of such temporary relief as may be afforded by a laxative when such symptoms or conditions are due to or caused by constipation, and has no therapeutic value in the treatment of constipation in excess of affording temporary relief. The regular and customary price of the quart size package of respondent's product is not \$1 and the offer to sell three such packages for \$1 is not a special or limited offer but on the contrary is the regular and customary price in such quantity lots generally available to the public. Respondent's product is not a tonic as this term is generally understood and produces no general tonic effect on the body.

PAR. 6. 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, respondent's said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations and others of similar nature, disseminated as aforesaid, has had, and now has, the tendency and capacity to and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts; and

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

It is ordered, That the respondent, Pow-A-Tan Medicine Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its medicinal preparation designated "Pow-A-Tan Herb Tonic," or any other medicinal preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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 is a cure or remedy for neuritis, arthritis, rheumatism, indigestion, la grippe, colds, weakness, tired out feeling and general run-down condition, ailments or disorders of the liver, pains in the neck, shoulders, side, back, and hips, heartburn or palpitation of the heart, belching, gas on stomach, sick stomach, lumbago, or female complaints or that said preparation has any therapeutic value in the treatment of any of such conditions.

(b) That respondent's preparation has any therapeutic value in the treatment of gas and bloating, piles, biliousness, bad taste in the mouth, or sick headache in excess of affording temporary relief when such conditions are due to constipation.

(c) That respondent's preparation is a cure or remedy for constipation or that it has any therapeutic value in the treatment thereof in excess of affording temporary relief for such condition.

(d) That the use of respondent's preparation will prevent such diseases and conditions as colds, appendicitis, tuberculosis, catarrh, typhoid, or other contagious or acute diseases.

(e) That respondent's preparation is a tonic or that its use will produce a general tonic effect on the body.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act which advertisement fails to reveal that respondent's preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis; *Provided, however*, That if the directions for use wherever they appear, on the label, in the labeling, or both

Order

36 F. T. C.

on the label and in labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement, "CAUTION: Use only as directed."

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 respondent's preparation which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof or which fails to comply with the requirements set forth in paragraph 2 hereof.

4. Representing directly or by implication that said preparation is sold by means of a special or limited offer when the method of distribution is the usual and customary method used by the respondents in the usual and customary course of business.

5. Using the word "tonic" alone or in association with any other word or words to designate, describe, or refer to any preparation which is not a tonic and which does not produce any general tonic effect upon the body.

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

PHILIP R. PARK, INC., PHILIP R. PARK, HARRISON H.
HAVNER, JOHN S. HUNT, AND PHILIP E. IVERSEN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4504. Complaint, May 15, 1941—Decision, Apr. 27, 1943

Where a corporation and four individuals, who as director and officers controlled its advertising policies and business activities, engaged in the mixing and competitive interstate sale and distribution, among other livestock and poultry feeds, of their "Cattle ManAmar" or "ManAmar," composed of ground dehydrated kelp and fish meal chiefly; in advertisements in magazines and other periodicals, and in pamphlets, folders, and other advertising literature, directly or by implication—

(a) Represented that said product had therapeutic value in the treatment of various diseases and disorders of cattle, would eliminate, cure, or prevent mastitis and breeding disorders, including Bang's disease, and prevent retained placenta; and that use thereof would eliminate the necessity of veterinary services;

The facts being that it had no medicinal quality or therapeutic value in the treatment of any germ or infectious disease—such as usually cause breeding troubles in cattle—or of any breeding disorder or mastitis, and had no value in preventing the same, including infectious abortion or Bang's disease, or retained placenta; and use thereof would not serve as a substitute for veterinary care or eliminate necessity of veterinary treatment, but on the contrary, reliance thereon in case of contagious diseases might cause their spread through failure to segregate or dispose of infected animals;

(b) Represented that its said product was a better feed supplement and constituted a better livestock feed than any other on the market;

The facts being that its value as a feed supplement was no greater than that of many others; while it would supply iodine when used in sections of the country where iodine deficiency exists, the amount thereof was insufficient to act as a germicide and was of no value whatsoever where any germ or infectious disease existed; and other minerals which might be supplied by it are readily obtainable in many other feeds, and likewise have no such therapeutic value;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of inducing it to purchase the product in question, whereby trade was diverted unfairly from competitors who truthfully represent their products:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. John M. Russell and *Mr. Randolph W. Branch* for the Commission.

Mr. Daniel Dougherty, of San Francisco, Calif., for respondents.

Complaint

38 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 Philip R. Park, Inc., a corporation, Philip R. Park, Harrison H. Havner, John S. Hunt, and Philip E. Iversen, individually, and as officers of Philip R. Park, 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, Philip R. Park, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, and respondents, Philip R. Park, Harrison H. Havner, John S. Hunt, and Philip E. Iversen, individuals, are president, vice-president, treasurer, and secretary thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business is located in San Pedro in the State of California.

PAR. 2. Respondent, Philip R. Park, Inc., now is, and for over 8 years last past has been, under the control and direction of said individual respondents, engaged in the business of mixing and of selling and distributing two feeds for livestock called ManAmar and Cattle ManAmar, which are hereinafter designated ManAmar. Respondents cause said product ManAmar, when sold, to be transported from said 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 product ManAmar 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, respondents are in active and substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

Among such competitors there are many who do not make any misrepresentations or false statements concerning the qualities and properties of their respective products and of their effectiveness when used.

PAR. 4. In the course and conduct of the business aforesaid, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product ManAmar 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 said product ManAmar by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, through The Holstein-Friesian World Guernsey Breeders Journal, Hoard's Dairyman, publications circulated among breeders and dairymen, in corporate respondent's booklets entitled "Results of ManAmar Feeding" and "The New Way to Feed Minerals," in its magazine called "ManAmar" and in other publications and advertising literature, are the following:

Mastitis can be prevented with feeds mixed with ManAmar.

Mr. Keeney Tops World in Milk Production.

Mr. Keeney will tell you something about the records made by the herd of which he is in charge, and how these records were accomplished. * * *

We have eliminated practically all breeding disorders and have solved the retained placenta (afterbirth) problem * * *.

All other factors in the herd have been the same as they were for several years before the feeding of ManAmar rations. We can only attribute these distinct benefits to this 40% protein and organic mineral supplement * * *.

* * * Improved breeding order, elimination of retained placenta and mastitis, which formerly caused considerable production loss. This feed factor, responsible for Health Improvement is * * * due to the use of * * * ManAmar.

* * * With the advent of ManAmar (10% in our grain ration) we discontinued veterinary treatments and left it up to ManAmar, a mixture containing fish meal, kelp, and ground oyster shells. Within about six months our troubles practically all disappeared.

During the past two and one half years we have had 400 calvings with only 3 retained placenta or any afterbirth trouble. Approximately two fifths of these calvings were from cows which were positive to Bang's bacillus test. * * * We have very good breeding order. * * * ManAmar is responsible.

Mr. Fanslow tops world in butterfat * * *.

Mr. Fanslow makes this statement * * *:

Within thirty days my calves had stopped eating dirt, and the last case of gottle had been dropped. I noticed a sudden tapering off in the number of retained placenta; it had previously been forty per cent * * *. I am firmly

Complaint

36 F. T. C.

convinced that ManAmar has supplied the deficiency that caused all that trouble. I attribute the greatly improved health condition of the herd to the regular use of ManAmar * * *.

Where ManAmar is used serious reproduction troubles cease (disappear)—and cows show more profitable reproduction records.

Feeds not assimilated are wasted; harmful to livestock; ManAmar increases the appetite, digestion and profits.

* * * Tens of thousands of farmers, poultrymen and leading pure breed cattle dealers have found in ManAmar the factor lacking in other rations.

MANAMAR * * *

Improves: Health Growth Production Reproduction Use in all livestock and poultry feedings.

PAR. 5. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent, directly or indirectly, to customers and prospective customers that the product ManAmar, a feed or feed supplement, when consumed by cattle or other livestock will eliminate and prevent mastitis; that it will eliminate practically all breeding disorders; that it will absolutely eliminate and prevent retained placenta; that it will eliminate the necessity of veterinary services within 6 months; that it will cure Bang's disease; that it will eliminate goitre; that it will cause all serious reproduction troubles to disappear; that it will cause cows to show more profitable reproduction records; that it is a better feed for cattle and other livestock than any other feed on the market; that it contains beneficial ingredients that are lacking in all other livestock feeds; that it will improve the health, growth, production, and reproduction of all livestock and poultry.

PAR. 6. The statements and representations used and disseminated by the respondents in the manner above described are false, misleading, and deceptive. In truth and in fact, the use of the product ManAmar as a feed or a feed supplement for cattle or other livestock will not prevent or eliminate mastitis; it will not eliminate practically all breeding disorders; it will not eliminate or prevent retained placenta; it will not eliminate the necessity of veterinary services; it will not cure Bang's disease; it will not eliminate goitre; it will not cause serious reproduction troubles to disappear; it will not cause cows to show more profitable reproduction records; it is not a better feed for cattle and other livestock than any other livestock feed on the market; it does not contain beneficial ingredients that are lacking in any other livestock feeds; it will not improve the health, growth, production, or reproduction of any livestock or poultry.

The product ManAmar is practically the equivalent of linseed meal for its growth and milk-producing qualities and is a good feed

or feed supplement for cows, but its use causes no measurable health benefits. There are many other kinds of supplemental feeds which accomplish the same results and are far cheaper. It will not cure or relieve germ or infectious diseases in cattle or other livestock; and tuberculosis, mastitis, and Bang's disease are germ or infectious diseases. There is no bacteria-killing agent in the product. It is not beneficial in retained placenta and would have little or no effect on reproduction troubles. No beneficial results are obtained from the product commensurate with the high cost thereof. Ingredients in the product ManAmar are essential to a well-balanced diet for cattle, but they can be obtained from products available on the farm, except in those sections of the country where it is difficult to obtain a well-balanced diet. It is not a cure, remedy, or preventative for diseases in cattle.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondents' livestock feed supplement ManAmar because of such erroneous and mistaken belief, engendered as above set forth, thereby unfairly diverting trade to the respondents from their competitors in said commerce who truthfully represent their products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 15, 1941, issued and subsequently served its complaint in this proceeding upon the respondents Philip R. Park, Inc., a corporation, and Philip R. Park, Harrison H. Havner, John S. Hunt, and Philip E. Iversen, individually, and as officers of Philip R. Park, Inc., a corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of

respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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 briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Philip R. Park, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, having its principal office and place of business in San Pedro, Calif. Respondent, Harrison H. Havner, is a director, and respondents, Philip R. Park, John S. Hunt, and Philip E. Iversen, are president, treasurer, and secretary, respectively, of respondent corporation and have dominant control of the advertising policies and business activities of said corporate respondent. All of said respondents have acted in conjunction and cooperation with each other in doing the acts and practices hereinafter described.

PAR. 2. Respondents, for several years last past, have been engaged in the business of mixing and of selling and distributing certain feeds for livestock and poultry. Among the feeds so sold and distributed by the respondents is a concentrated food for cattle, composed chiefly of ground dehydrated kelp and fish meal, which has been designated as "Cattle ManAmar" or "ManAmar." Respondents cause said product ManAmar, 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 product ManAmar 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, respondents are in active and substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of feeds for cattle in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product ManAmar 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 said product ManAmar by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by insertions in magazines and other periodicals having a general circulation and also in pamphlets, folders, and other advertising literature are the following:

RETAINED AFTERBIRTH

Heavy losses are experienced year after year by dairymen as a result of retained afterbirth. Proper feeding helps eliminate this trouble.

MANAMAR FEEDS

ManAmar, Nature's Food Minerals from the Sea, supplement good grain feeds with essential minerals and high quality proteins in easily assimilated form. Aids in preventing, breeding and other troubles, and encourages heavy production. * * *

I have no breeding troubles nor any kind of disease in my cows since I began this feed.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, the respondents represent directly or by implication that the product ManAmar has therapeutic value in the treatment of various diseases and disorders of cattle and will eliminate or cure breeding disorders, prevent such disorders, and prevent retained placenta.

PAR. 6. In addition to the false advertisements disseminated as hereinabove described, the respondents have also made false, deceptive, and misleading statements and representations concerning their said product ManAmar by means of advertisements inserted in magazines and other periodicals and by circulars, pamphlets, and other adver-

tising literature. Among and typical of such false, deceptive, and misleading statements and representations are the following:

"Mastitis" can be prevented with feeds mixed with ManAmar.

Where ManAmar is used, serious reproduction troubles cease (disappear)—and cows show better, and more profitable production records.

We had, for some time previous to 1930, been improving calving conditions somewhat through injections of abortion bacterins at regular intervals during the cow's pregnancy. With the advent of ManAmar (10% in our grain ration) we discontinued veterinary treatments and left it up to ManAmar, a mixture containing fish meal, kelp, and ground oyster shells. Within about six months our troubles practically all disappeared. * * * Approximately two-fifths of these calvings were from cows which are positive to Bang bacillus test * * * We have a very good breeding order and the retained placenta trouble has absolutely been eliminated. ManAmar is responsible.

ManAmar stands preeminent as a supplement to feeds. Because of its ocean origin and its ability to furnish in proper proportions valuable proteins, vitamins and mineral substances, ManAmar fits into the farm feeding picture better than any other single product available as a supplement to feeders and breeders today.

PAR. 7. Through the use of the false, deceptive, and misleading statements and representations hereinabove set forth in paragraph 6, and others of similar import not specifically set out herein, the respondents have represented that the product ManAmar has therapeutic value in the treatment of various diseases and disorders of cattle and will eliminate or cure mastitis and breeding disorders, including Bang's disease and retained placenta, and will prevent such disorders; that the use of this product will eliminate the necessity for veterinary services; and that said product is a better supplement to feeds and constitutes a better feed for cattle and other livestock than any other feed or feed supplement on the market.

PAR. 8. Breeding troubles in cattle are usually of an infectious nature caused by some germ disease. The principal breeding disorder is infectious abortion, known as Bang's disease. Retained placenta is largely due to infection resulting from infectious abortion. The product ManAmar has no medicinal qualities or therapeutic value in the treatment of any germ or infectious disease. Its use will have no therapeutic value or beneficial effect in the treatment of any breeding disorder or be of any value in preventing such disorder. Its use will have no effect whatsoever in the treatment of any infectious abortion condition or Bang's disease. Its use will not eliminate, cure, or prevent retained placenta or have any beneficial effect upon such condition. This product has no therapeutic value or beneficial effect in the treatment or prevention of mastitis. The use of this preparation will not serve as a substitute for veterinary care or eliminate the necessity of veterinary treatment. Instead, where con-

tagious diseases such as infectious abortion exist, reliance upon such representations on the part of purchasers of respondents' product might cause a spread of such disease among other animals in the herd because of a failure to segregate or dispose of infected animals.

Respondents' product ManAmar has value as a feed supplement but its value is no greater than that of many other kinds of feed supplements. Since the primary ingredients of respondents' product are fish meal and kelp, it will supply iodine when used in those sections of the country where an iodine deficiency exists. However, the amount of iodine supplied by this product is not sufficient to act as a germicide and is of no value whatsoever where any germ or infectious disease or condition exists among cattle. The other minerals which might be supplied by this product are readily obtainable in many other feeds and have no therapeutic value or beneficial effect upon any germ or infectious disease or disorder. While there are some deficiency areas of various minerals in this country, there are many feeds and feed supplements produced in nondeficient areas which will supply such deficiencies as effectively as respondents' product.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and induces a substantial portion of the purchasing public to purchase respondents' product ManAmar because of such erroneous and mistaken belief, thereby unfairly diverting trade to the respondents from their competitors in said commerce who truthfully represent their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, answer of the respondents, 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 made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually, and as officers and directors of Philip R. Park, Inc., a corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of livestock feeds or feed supplements for cattle and other livestock known as "ManAmar" or "Cattle ManAmar," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

- (a) That respondents' product has any therapeutic value in the treatment of any germ or infectious disease of cattle or that its use is of any value in the prevention of any such disease or condition.

- (b) That respondents' product has any therapeutic value or beneficial effect in the treatment of any breeding disorder of cattle or is of any value in preventing such disorder.

- (c) That respondents' product has any therapeutic value or beneficial effect in the treatment of retained placenta or that its use will have any value in preventing such condition.

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

It is further ordered, That the respondent, Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually, and as officers of Philip R. Park, Inc., a corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device in con-

541

Order

nection with the offering for sale, sale, and distribution of livestock feeds or feed supplements for cattle and other livestock known as "ManAmar" or "Cattle ManAmar," 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 representing:

1. That respondents' product will have any therapeutic value in the treatment of mastitis or that its use is of any value in the prevention of such condition.

2. That respondents' product has any therapeutic value in the treatment of any germ or infectious disease of cattle or that its use is of any value in the prevention of any such disease or condition.

3. That respondents' product has any therapeutic value or beneficial effect in the treatment of any breeding disorder of cattle or that its use is of any value in preventing such disorder.

4. That respondents' product has any therapeutic value in the treatment of retained placenta, infectious abortion, or Bang's disease, or that its use will have any beneficial effect upon such conditions or any value in preventing such conditions.

5. That respondents' product is a better supplement to feeds or constitutes a better feed for cattle than any other feed or feed supplement on the market.

6. That the use of respondents' product will eliminate the necessity of veterinary treatment.

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

IN THE MATTER OF

J. A. STRANSKY AND L. G. STRANSKY, TRADING AS
J. A. STRANSKY MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1612. Complaint, June 10, 1937¹—Decision, Apr. 28, 1943*

Where an individual, engaged in the manufacture and competitive interstate sale and distribution of a mechanical auxiliary automotive device described as a vaporizer and decarbonizer and designated as "Stransky Vaporizer"; through advertisements in circulars, pamphlets, newspapers, and other publications—

- (a) Represented that the use of said device would substantially reduce gasoline consumption 25 percent or more, and increase mileage per gallon of gas; remove carbon from the parts of an automobile engine which are injuriously affected thereby; reduce spark-plug troubles, give power and speed to the engine, and prevent overheating of automobile engines; and cause a motor to start more easily and eliminate oil pumping;

The facts being that the device in question, performance of which was limited to the admission of unscreened air into the automobile manifold, thereby leaning the mixture entering the engine, was not capable, as established by Bureau of Standards tests and expert testimony, of making any improvement in automobile engine performance over that obtainable with proper carburetor adjustment alone; and it would not accomplish the results claimed therefor, but might actually have adverse or harmful effects; and

- (b) Represented that prospective purchasers could obtain a certain number of respondent's devices free or could obtain a pen-and-pencil set free by purchasing a specified number of his devices, and that they could test said device without charge before buying;

The facts being prospective purchasers were required to pay purchase price before being permitted to test device, and said so-called free goods formed part of a combination offer and their cost was included in the price of the device required to be purchased;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it to purchase respondent's products because of such mistaken belief, whereby trade was diverted unfairly to him from his competitors who truthfully advertised their products:

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

As respects the truth of representation that a certain device to be attached to the intake manifold of an automobile, function of which was to introduce additional air, would result in more economical operation and improved performance and running condition; tests as to the results obtained, according to the testimony of certain witnesses, had little or no probative value,

¹ Amended and supplemental.

it appearing that none of them were made under comparable test conditions, that there was no evidence that the carburetor was set at maximum economy in making the tests with and without the device, and that the conditions under which the road tests were performed included many variable factors, and it appearing further that there was nothing in the tests or in the evidence in connection therewith which indicated that the device was capable of making any improvement in automobile engine performance over that obtainable without it by adjustment of the carburetor.

Before *Mr. Randolph Preston* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Floyd O. Collins, *Mr. S. Brogdyne Teu, II*, and *Mr. Carrel F. Rhodes* for the Commission.

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

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that J. A. Stransky and L. G. Stransky, copartners, trading under the firm name and style of J. S. Stransky Manufacturing Co., hereinafter referred to as respondents, have been, and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, J. A. Stransky and L. G. Stransky, are copartners, trading under the firm name and style of J. A. Stransky Manufacturing Co., having and maintaining their principal place of business in the city of Pukwana, in the State of South Dakota.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the manufacture, transportation, sale, and distribution in commerce among and between the various States of the United States of a mechanical device described as a vaporizer and decarbonizer and designated Stransky Vaporizer. Respondents cause said product, when sold, to be shipped and transported in interstate commerce from their place of business, located in the State of South Dakota, to purchasers thereof located at various points in States of the United States other than the State of South Dakota. Respondents now maintain and have at all times mentioned herein maintained a constant current of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondents, in the course of and conduct of their business as aforesaid are now, and at all times herein referred to have been,

in substantial competition with other partnerships and firms, individuals, and corporations likewise engaged in the sale and distribution in commerce among and between the various States of the United States of other mechanical appliances and devices which are manufactured, advertised, recommended, and sold for substantially the same purpose and use for which respondents' product is advertised and sold.

PAR. 4. Respondents, in the course of and conduct of their business as aforesaid, and for the purpose of inducing individuals to purchase said Stransky Vaporizer, have caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, and have printed and circulated throughout the several States of the United States, through the United States mails and otherwise, to customers and prospective customers, certain advertising literature in all of which respondents have caused the firm name and name of said product to be prominently and conspicuously displayed and in which the following statements are made:

You can test it—prove it—without the loss or risking of one penny of your money.

Just think, 10 New Improved Stransky Gas Economizers free.

It is not necessary for you to risk one penny to prove that the "New Improved" Stransky is what I claim.

Saves 25% or more gasoline.

Reduces carbon.

Reduces spark plug trouble.

Gives more power and speed.

Helps prevent overheating.

Saves them many times its price on gas bills.

I will send you your first order of 100 Economizers at a special price of 70¢ each or \$70.00 and not only that, but will give you 10 extra free.

With the above order I will also include 2 Extra Economizers free (which makes you \$41.00 profit when sold by you) and I will also give you a beautiful fountain pen and pencil set with memorandum book, (a \$7.50 value) put up in a very neat box Absolutely Free if you act now.

PAR. 5. All of said statements as above set out, together with many other similar statements appearing in respondents' advertising and literature, purport to be descriptive of respondents' product, Stransky Vaporizer. In all of the respondents' advertising matter and literature, the respondents represent through the statements herein set out and through other statements of like import and effect that said vaporizer will reduce fuel consumption 25 percent or more; will reduce carbon; will reduce spark plug trouble; will give more power and speed to motors; will prevent overheating; will cause a motor to start easier; will eliminate oil pumping; will enable an automobile to run from 37 to 57 miles on 1 gallon of gasoline; that a prospective

purchaser can test said vaporizer without any risk; that with the purchase of a certain number of vaporizers, the purchaser is given a certain number of vaporizers free; and that pen and pencil sets are given free with the purchase of a given number of vaporizers.

PAR. 6. The claims and representations made by the respondents with respect to the efficacy of respondents' product, Stransky Vaporizer, and the results to be obtained from the use of said vaporizer, and the representations with reference to the free goods are grossly exaggerated, false, and misleading. In truth and in fact, respondents' product, Stransky Vaporizer, does not make possible any appreciable improvement in fuel economy. Said devise is not capable of making any improvement in engine performance over that normally obtainable without the use of said device. No beneficial results can be obtained through the use of said device that cannot be obtained through the proper adjustment of the original appliance or appliances already upon and forming a part of motors. The purchaser is not permitted to test said device without any risks, but is required to pay for such device before testing same. The articles advertised as being given away free are not in truth and in fact given away free, but the cost thereof is included in the purchase price of the articles purchased.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating and describing the product, Stransky Vaporizer, and the results to be obtained from the use of said device, as hereinabove set out, in offering for sale and selling said device, were and are calculated to, and had, and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence of said mistaken and erroneous beliefs, induced by the acts and representations of the respondents as hereinabove set out, a number of the purchasing public have purchased respondents' product with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in manufacturing, selling, and distributing vaporizers and decarbonizers and who do not misrepresent the efficacy or value of their respective products. As a result of the unfair acts, and false and misleading representations of the respondents, injury has been, and is now being done by respondents to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are all to the prejudice and

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 25, 1929, issued and subsequently served its complaint in this proceeding on the respondents, J. A. Stransky and L. G. Stransky, copartners, trading under the firm name and style of J. A. Stransky Manufacturing Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the filing of respondents' answer to said complaint, the Commission, on June 10, 1937, issued, and subsequently served, its amended and supplemental complaint upon said respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions 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 trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on said amended and supplemental complaint, testimony, and other evidence, report of the trial examiners upon the evidence and supplemental report of Trial Examiner Lewis C. Russell 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. Respondents, J. A. Stransky and L. G. Stransky, were formerly copartners, trading under the firm name and style of J. A. Stransky Manufacturing Co. On or about February 17, 1939, during the pendency of this proceeding, respondent, J. A. Stransky died, and subsequent to that time respondent, L. G. Stransky, as an individual, has continued to trade under the firm name

and style of J. A. Stransky Manufacturing Co., having his principal place of business in the city of Pukwana, in the State of South Dakota.

PAR. 2. Respondent, L. G. Stransky, is now, and for several years last past has been, engaged in the manufacture and in the sale and distribution in commerce among and between the various States of the United States of a mechanical device described as a vaporizer and decarbonizer, designated as "Stransky Vaporizer." Respondent causes said device, when sold, to be shipped and transported from his place of business in the State of South Dakota 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 device in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his said business, said respondent, L. G. Stransky, prior to February 17, 1939, as a copartner, with J. A. Stransky, and subsequent thereto, as an individual, trading as J. A. Stransky Manufacturing Co., has been in substantial competition with other partnerships and individuals and with corporations likewise engaged in the sale and distribution in commerce among and between the various States of the United States of other mechanical appliances and devices which are manufactured, advertised, recommended, and sold for substantially the same purpose and use for which respondent's product is advertised and sold.

PAR. 4. In the course and conduct of his said business as aforesaid and for the purpose of inducing the purchase of his said device, respondent has made false, deceptive, and misleading statements and representations concerning his said device in circulars and pamphlets and in advertisements inserted in newspapers and other publications, all of which have been circulated between and among the various States of the United States. Among and typical of such representations made by the respondent are the following:

1. That the use of respondent's device will substantially reduce gasoline consumption 25 percent or more and increase mileage per gallon of gas.

2. That the use of said device will remove carbon from the parts of an automobile engine which are injuriously affected thereby.

3. That the use of said device will reduce spark plug troubles, give power and speed to the engine, and prevent overheating of automobile engines.

4. That the use of said device will cause a motor to start more easily and eliminate oil pumping.

5. That prospective purchasers can obtain a certain number of respondent's devices free or can obtain a pen-and-pencil set free by purchasing a specified number of respondent's devices.

6. That prospective purchasers can test respondent's device without charge before buying.

PAR. 5. Based upon tests made by the National Bureau of Standards and the expert testimony introduced in this case, the Commission finds that the use of respondent's device will not substantially reduce gasoline consumption, remove carbon or reduce carbon formation, reduce spark plug trouble, give power and speed to the engine, prevent overheating, eliminate oil pumping, or cause the motor to start easier and that said device is not capable of making any improvement in automobile engine performance over that obtainable without such device.

PAR. 6. Respondent's device is a mechanical contrivance attached to the intake manifold of an automobile motor between the carburetor mixing bowl and the lead into the combustion chamber and the cylinders. This device is made in different sizes and forms to fit various types of cars, but all models of respondent's device operate on the same general principle. In the operation of an automobile engine when the gas passes from the mixing compartment proper of the carburetor through the intake manifold into the combustion chamber, a certain suction or vacuum is created. This suction or vacuum raises the small bearings or balls located in respondent's device, thus permitting air to enter the ingoing mixture of gasoline and air. As the suction in the fuel carburetor system increases, the balls or bearings in this device are raised higher from their seat, thus permitting a greater quantity of air to be taken into the combustion chamber of the motor. In a test made by the National Bureau of Standards it was determined that a Chevrolet engine operating at full throttle and 1,600 revolutions per minute uses approximately 100 cubic feet of air per minute. Under the same conditions respondent's device supplied only 0.4 cubic feet of air per minute, which is negligible, being less than one-half of 1 percent of the total amount of air that the engine was using. Consequently, respondent's device has no effect upon available power or economy at full throttle, and the tests made over the full range of mixtures on which an engine would run indicate that the air supplied by respondent's device makes no improvement in performance which cannot be obtained without such device by suitable carburetor adjustment.

PAR. 7. The purpose of a carburetor is to supply to the automobile engine the proper mixture of gasoline and air so that the motor will give the maximum power for the minimum amount of gasoline. The

carburetor controls both the intake of air and the intake of gasoline. Respondent's device has no effect upon the intake of gasoline but merely increases the intake of air, dependent upon the vacuum condition which exists at the time.

If the carburetor is in perfect condition the additional air supplied by respondent's device is simply additional to that intended by the original adjustment upon the carburetor and to this extent negatives the operation of the carburetor in connection with the engine of the car. If the carburetor in a car is not in perfect condition or the air intake passages are clogged with dirt, respondent's device would supply additional air and temporarily give a leaner mixture than would be obtained from a badly fouled carburetor. This, however, would be a hit-and-miss arrangement at best, as satisfactory results could be obtained merely by cleaning the carburetor or adjusting it. Since the performance of respondent's device is limited to the admission of air into the manifold and thereby leaning the mixture entering the engine, nothing can be accomplished by this device that cannot readily be accomplished merely through adjustment of the carburetor. If the carburetor is properly adjusted, the best performance in starting the motor will be obtained. The introduction of additional air by means of respondent's device, if sufficient to have any effect, will adversely affect the starting of the motor since the leaning of the mixture interferes with the action of the carburetor. Consequently, respondent's device is of no value in assisting or causing the motor to start when the carburetor is in proper adjustment, and in cases where carburetor is out of adjustment more effective results can be obtained by adjustment of the carburetor than by the use of respondent's device.

PAR. 8. Carbon in an engine is the formation of gum, unburned oil, and dirt in the engine and cylinders. Since the sole property of respondent's device is to increase the intake of air and lean the mixture used by the engine, it will not have any effect on removing carbon so formed, but, instead, is more likely to increase the formation of such carbon since this device has no screen or filter and will draw dirt and dust through the jet, which will be carried through the manifold and into the engine and possibly deposited on the walls, thereby aiding in the building up of carbon.

PAR. 9. "Spark plus trouble" is a general term which might apply to any defect or condition of spark plugs. There is nothing in either the tests conducted on this device or in the testimony of the various experts which indicates that a device such as the respondent's, the sole performance of which is limited to the admission of air into the manifold of an automobile engine, has any effect upon any spark plug trou-

ble. The amount of air supplied by respondent's device and the possible leaning of the mixture resulting therefrom has no effect upon the heating of the motor and will not prevent overheating. The only possible effect that respondent's device might have upon oil pumping would be to increase, rather than to remedy, this defect. This device permits dirty air to enter the combustion chamber of the engine since no filter is attached which cleans such air. In permitting this air to enter the combustion chamber, a certain amount of grit is likewise likely to enter. This grit if it accumulates over a period of time might be enough to act as an abrasive, causing the cylinder walls, pistons, and rings to wear more rapidly than if respondent's device were not used. Such wear would have a tendency to increase oil consumption, rather than to decrease it. There is nothing in either the tests or the expert testimony which permits the conclusion that the use of respondent's device gives more power to the motor or increases its speed. Its performance, if any, is limited to idling and low speeds, and, if the carburetor is adjusted to provide a lean mixture for either idling or low speed, the use of this device would cause the car to stall and operate in a jerky manner at low speed.

PAR. 10. Certain witnesses for the respondent testified as to results obtained through tests of respondent's device. None of these tests were made under comparable test conditions. There is no evidence that the carburetor was set at maximum economy in making the tests with and without respondent's device. The conditions under which the road tests were made included many variable factors, which give to such tests little or no probative value. Furthermore, there is nothing in these tests or in the evidence in connection therewith which indicates in any way that respondent's device is capable of making any improvement in automobile engine performance over that obtainable without such device by adjustment of the carburetor.

PAR. 11. Prospective purchasers of respondent's device were not permitted to test said devices without charge or risk before buying, as they were required to pay the purchase price for said device before being permitted to test it. Purchasers of respondent's devices do not obtain a certain number of such devices free or obtain a pen-and-pencil set or other articles of merchandise free, but, instead, the cost of such devices or merchandise is included in the purchase price of the devices required to be purchased, and such so-called free goods form part of a combination offer.

PAR. 12. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondent's products because of such erroneous and mistaken belief. As a result, trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, 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 supplemental report of Trial Examiner Lewis C. Russell 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 respondent, L. G. Stransky, trading as J. A. Stransky Manufacturing Co., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, L. G. Stransky, an individual, trading as J. A. Stransky Manufacturing Co., 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 his device designated as "Stransky Vaporizer," or any other device of substantially similar construction 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 any greater reduction in gasoline consumption or improvement in automobile engine performance can be obtained through the use of respondent's device than that which may be obtained without such device by adjustment of the carburetor.

Order

36 F. T. C.

2. Representing directly or by implication that respondent's device will remove carbon from the parts of an automobile engine or reduce formation of carbon.

3. Representing directly or by implication that respondent's device will reduce spark-plug trouble, give power or speed to an automobile engine, or prevent overheating of such engine.

4. Representing directly or by implication that respondent's device will cause a motor to start more easily, eliminate oil pumping, or reduce oil consumption.

5. Using the term "free" or any other term of similar import or meaning to designate, describe, or in any way refer to articles of merchandise regularly included in a combination offer with respondent's devices or other merchandise.

6. Representing directly or by implication that respondent will permit prospective purchasers to test his device without charge before buying, when prospective purchasers are required to pay the purchase price in advance before being permitted to test such device.

It is further ordered, That the complaint be dismissed as to respondent, J. A. Stransky, deceased.

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
JACOB SIEGEL COMPANY

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

Docket 3403. Complaint, May 16, 1940¹—Decision, Apr. 28, 1943

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of men's clothing, including overcoats and topcoats made of its "Alpacuna" fabric which had a face or pile composed of about 50 percent alpaca, 20 percent mohair, and 30 percent wool, worked in the case of the overcoats but not of the topcoats, into a cotton backing comprising about 30 percent of the entire fabric—

- (a) Represented that such fabric was made entirely of wool through statements and depictions in advertising matter included in swatch books which it supplied to dealers and which were frequently displayed by them to the purchasing public, and through advertising copy furnished to dealers for their use in advertising its said coats in their trade areas, of which they made frequent and repeated use;
- (b) Represented, as aforesaid, that its said fabric contained guanaco hair and that the Angora goat hair used therein was imported from Turkestan or some other Asiatic country;

The facts being that, while the fabric used by it in its topcoats was a wool and hair material, such was not true as to the overcoats in which the aforesaid cotton backing constituted about 30 percent of the fabric, and while in its more recent advertising it referred to said fact, such reference was usually in smaller and less conspicuous type than other portions of the advertisement, and, the overcoats being full-lined, the prospective purchaser had little opportunity to observe such backing when examining the garment; guanaco was used in neither coat, and presence thereof in cases in which guanaco hairs might accidentally find their way into shipments of alpaca was negligible in amount; and such Angora goat hair or mohair as was used therein was not imported from any foreign country but was a domestic product obtained from Texas; and

- (c) Made use of word "Alpacuna" to designate its aforesaid fabric with result of falsely implying that its coats contained vicuna fiber;

With tendency and capacity to deceive a substantial portion of the purchasing public with respect to the fiber content of such coats and the origin of the materials used therein, and, as a result, to cause 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 competitors and constituted unfair methods of competition.

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

Mr. George W. Williams for the Commission.

Montgomery & McCracken, of Philadelphia, Pa., for respondent.

¹ Amended.

AMENDED COMPLAINT

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

PARAGRAPH 1. Respondent, Jacob Siegel Co., is a corporation, organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business at 317 North Broad Street, Philadelphia, Pa. Respondent is now, and for some time past has been, engaged in the business of manufacturing, selling, and distributing men's overcoats and topcoats, among which are garments known as "Alpacuna" coats. Respondent causes said coats, when sold, to be transported from the State of Pennsylvania to the purchasers thereof located at points in various other States of the United States and in the District of Columbia. There is now, and has been during all the time herein mentioned, a course of trade by respondent in said overcoats and topcoats in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, respondent is now, and has been during all times herein mentioned, engaged in substantial competition with various other corporations and with individuals and firms engaged in offering for sale and selling and distributing overcoats and topcoats 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 coats by retailers for resale and by members of the purchasing public for use, respondent has made use of, and now uses various types of advertising matter purporting to be descriptive of its said "Alpacuna" coats and their quality and desirability. This advertising matter consisting of swatch books and advertising copy for use by retailers in their own advertising of respondent's coats is caused to be transported by respondent from its place of business in Pennsylvania to its retail customers located in the various States of the United States.

The swatch book of samples sent by respondent to its retailers contains samples of goods from which "Alpacuna" overcoats and "Alpacuna" topcoats are made, which said swatch books also contain the following advertising material: A simulated pictorial hemisphere

above which are the words "From the four corners of the world," and from points on this run four lines on which appear pictorial representations and words as follows: (1) An Angora goat, with these words underneath: "Strength from the Asiatic Angora." (2) A sheep with these words underneath: "Durability from the American sheep." (3) A Guanaco with these words underneath: "Silkiness from the Peruvian Guanaco;" and (4) An Alpaca with these words underneath: "Richness from the South American Alpaca."

In addition to said swatch book of samples, the respondent furnishes advertising copy to retail dealers to be so used by said retail dealers and which was, and is, so used by respondent's retailers in their advertising in newspapers having a general circulation in the various States of the United States, and which advertising copy contained among others the following statements and representations:

Q. What is ALPACUNA?

A. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco and Texas Sheep.

Q. Is this an unusual combination?

A. Yes, this combination of hair and wool is the result of 9 years of scientific laboratory research work by a textile genius.

Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South American Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of Old Peru we took the fine, lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheeps' wool. They were all brought together, and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light weight, long wear.

In the manner and through the means above stated, the respondent represents or implies that the material "Alpacuna" is an all-wool and hair fabric containing guanaco or vicugna or vicuna, and that it also contains the foreign fur, hair, or wool of the Angora goat from the plains of Turkestan.

In addition to the advertisements set out above, the respondent also furnishes to its retail dealers other advertising copy to be used by said retail dealers, and which was, and is, so used by respondent's retailers in their advertising in newspapers having a general circulation in the various States of the United States, in which said copy the composition of said fabric is not disclosed though the name of the fabric, to wit, "Alpacuna" is prominently featured without qualification.

The use of the term "Alpacuna" by the respondent as descriptive of the fabric used in the manufacture of its overcoats and topcoats constitutes a representation by said respondent to members of the

Complaint

36 F. T. C.

purchasing public that said fabric is composed entirely, or at least of a substantial quantity, of the fur, wool, or hair of the Alpaca and the Vicuna, and places in the hands of retailers a means and instrumentality by which such dealers are enabled to increase their own sales by representing that said overcoats and topcoats are all wool and composed entirely, or at least of a substantial quantity, of the fur, wool, and hair of the Alpaca and Vicuna, thus deceiving the purchasing public.

PAR. 4. The representations made by respondent with reference to the composition or content of said alpacuna fabric are deceptive, misleading, and false. In truth and in fact the fabric "Alpacuna" is not an all-wool and hair fabric, but contains 32 percent by weight of cotton. The formula for the manufacture of said material as used by the Continental Mills, Inc., located at Armat and Lena Streets, Philadelphia, Pa., in the manufacture of material No. 2650, which is manufactured exclusively for the respondent and which is the fabric marketed by the respondent under the name of "Alpacuna" is as follows:

	<i>Percent</i>
Alpaca-----	30.6
Mohair-----	13.6
Wool-----	23.6
Cotton-----	32.0

The cotton content of said fabric appears in the overcoat material only, not in the topcoat material, and is used as a backing for the wool and hair composing the remainder of the fabric. The cotton backing is concealed from the purchasing public by reason of a full lining placed in said overcoats which makes the cotton content not discernible to the purchaser. Both the topcoat fabric and the overcoat fabric known as "Alpacuna" contain no fur, hair, or wool of the guanaco, vicugna, or vicuna. Said fabric known as "Alpacuna" furthermore does not contain the foreign fur, hair, or wool of the Angora of the plains of Turkestan, but instead said wool is obtained from the domestic Angora goat of the State of Texas.

PAR. 4A. In addition to the above-mentioned advertising matter, respondent attaches a permanent cloth label and a medal, the latter by a string, to each of the topcoats and overcoats, both of which pass thereon to the consuming public. In the various advertisements and swatch books and on said labels and medals appears the legend or slogan, "There is only one Alpacuna coat." As the topcoats are exposed to ordinary and customary examination by purchasers and are readily discovered to be composed entirely of wool, or wool and a hair commonly classified by a substantial portion of the trade and

general public as wool, respondent represents to the purchasers thereof that the overcoats which, as above stated, bear the same name and are sold under the same trade-mark, as the topcoats are of the same composition as the topcoats, when in truth and in fact, as above set forth, the overcoats are composed of approximately one-third cotton. Also, such acts, practices and methods of the respondent supply retailers means whereby they may, and actually do, make like untrue representations to the ultimate purchasers and consuming public.

The use of the legend or slogan in the manner above set forth had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasers thereof, and supplies retailers with means whereby they may mislead and deceive their customers, into the erroneous and mistaken belief that the overcoats are of the same fiber content as the topcoats and are the same in all particulars, except as to weight.

PAR. 5. Over a period of many years fabrics made of all-wool or wool and hair have established a reputation as possessing superior cold-resistance qualities over fabrics made from cotton or other materials. Purchasers and prospective purchasers of topcoats and overcoats, on account of such reputation, have a decided preference for such all-wool or wool and hair fabrics over fabrics composed in part of cotton. Purchasers and prospective purchasers of topcoats and overcoats also have a decided preference for vicuna over alpaca, guanaco, angora, sheep's wool, or other similar wool, by reason of its fine quality and reputation, which preference also covers the combination of vicuna and alpaca over the combinations of wool in overcoat and topcoat fabrics.

PAR. 6. There are among the competitors of respondent many who do not misrepresent their fabrics and overcoats.

PAR. 7. The acts and practices of the respondent, as above alleged, in the course of selling and offering for sale its overcoats and topcoats in commerce as described herein, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasers thereof into the erroneous belief that said representations are true, and into the purchase of respondent's overcoats and topcoats because of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade has been diverted unfairly to the respondent from those of its competitors referred to in paragraph 6 hereof who do not misrepresent their overcoats and topcoats. In consequence thereof, injury has been, and is being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Jacob Siegel Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently, the Commission issued and served upon the respondent an amended complaint charging the respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said amended complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George W. Williams, attorney for the Commission, and in opposition thereto by Montgomery & McCracken, attorneys for the respondent, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it. Subsequently the Commission entered its order directing that said amended complaint be amended to conform to the evidence theretofore taken in this proceeding, and further directing that such evidence be adopted as evidence in connection with the second amended complaint. It was further directed by the Commission that said second amended complaint, containing the amendments made pursuant to said order, be issued and served upon the respondent. Pursuant to such direction said second amended complaint was issued on May 16, 1940, and thereafter served upon the respondent. Subsequently and after the filing of respondent's answer to said second amended complaint, additional testimony and other evidence were introduced before said trial examiner in support of and in opposition to the allegations of said second amended complaint, which testimony and other evidence, together with all of the testimony and other evidence originally taken in this proceeding, 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 second amended complaint, respondent's answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, briefs in support of and

in opposition to the complaint, and oral argument, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Jacob Siegel Co., is a corporation, organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 317 North Broad Street, Philadelphia, Pa. Respondent, is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of men's clothing, including certain overcoats and topcoats designated by respondent as "Alpacuna" coats.

PAR. 2. In the course and conduct of its business, respondent causes and has caused its coats, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its coats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations, and with individuals and firms, engaged in the sale and distribution of overcoats and topcoats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In 1929 respondent, in cooperation with certain textile specialists, developed a certain fabric for use in the making of men's overcoats. This fabric, designated by respondent as "Alpacuna" fabric, has a face or pile which is composed of approximately 50 per cent alpaca, 20 percent mohair, and 30 percent wool. The fibers making up this face are worked into a cotton backing. Of the entire fabric (face and backing) the face comprises approximately 70 percent and the cotton backing 30 percent.

Respondent states that its purpose in using the under surface or backing was to duplicate as nearly as possible the natural coat of the animals supplying the fibers, the backing representing the skin of the animal and the fibers representing the hairs or wool growing from the skin. The reason given for the use of a cotton rather than a worsted backing is that the former is more finely and closely woven, and that this makes possible the obtaining of a denser face of hair

and wool fibers than would be permitted by a worsted material. It was thought also that the cotton backing would add to the durability of the garment.

A year or two after the development of the overcoat fabric, respondent began the manufacture of topcoats. The material used in the topcoats is essentially the same as the face of the overcoating fabric, the principal difference between the two garments being that in the topcoat the cotton backing is omitted in order to make the garment lighter. A further difference is that the overcoat is full lined whereas the topcoat has very little lining. The fabrics used in the coats are not manufactured by respondent but are made by another concern according to specifications supplied by respondent.

PAR. 5. Respondent's coats are sold to the public through retail dealers. In the course and conduct of its business and for the purpose of inducing the purchase of its coats by dealers, and subsequently by the purchasing public, respondent makes use of various methods of advertising. One of such methods is the use of swatch books or books containing samples of the fabrics, which are placed by respondent in the hands of dealers purchasing its coats and also in the hands of dealers regarded by respondent as prospective purchasers. Such books are frequently displayed by dealers to the purchasing public. Some of these swatch books contain, among other advertising matter, a drawing or pictorial representation of a hemisphere, above which appears the legend, "From the Four Corners of the World." From various geographical locations shown on this hemisphere lines run to drawings or pictures of certain animals and under each of these pictures a further legend appears. Under the picture of an Angora goat appears the legend, "Strength from the Asiatic Angora." Under the picture of a sheep appears the legend, "Durability from the American sheep." Under the picture of a guanaco appears the legend, "Silkiness from the Peruvian Guanaco," and under the picture of an alpaca appears the legend, "Richness from the South American Alpaca."

Respondent also furnishes to its dealers suggested advertising copy for use by such dealers in advertising respondent's coats in newspapers published in the trade areas served by such dealers. Frequent and repeated use has been made by the dealers of this advertising copy. In certain of the copy the following advertising matter appears:

Ques. What is Alpacuna?

Ans. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco, and Texas Sheep.

Ques. Is this an unusual combination?

Ans. Yes, this combination of hair and wool is the result of 9 years of scientific laboratory research work by a textile genius.

Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South American Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of Old Peru we took the fine, lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheep's wool. They were all brought together, and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light weight, long wear.

PAR. 6. Through the use of these representations and others of a similar nature the respondent has represented, directly or by implication, that the fabric used in its coats is made entirely of wool or of wool and hair; that such fabric contains guanaco hair; and that the Angora goat hair used in such fabric is imported from Turkestan or some other Asiatic country.

PAR. 7. While the fabric used in respondent's topcoats is a wool and hair material, this is not true as to the overcoats, in which the cotton backing constitutes approximately 30 percent of the entire fabric. In some of its more recent advertising matter the respondent has referred to the fact that its overcoats contain cotton backing. However, such reference is usually in smaller and less conspicuous type than the other portions of the advertisement. In view of the fact that the overcoats are full lined, the prospective purchaser has little or no opportunity to observe the cotton backing when examining the garment.

In neither the overcoat nor the topcoat is guanaco hair used. It appears from the evidence that occasionally guanaco hairs may find their way into shipments of alpaca received by the mill which manufactures the fabrics for respondent, but in such cases the presence of the guanaco hairs is due entirely to accident and the amount is negligible. The Angora goat hair or mohair used in the fabrics is not imported from Turkestan or any other foreign country, but is a domestic product and is obtained from Angora goats raised in Texas. During the oral argument before the Commission it was stipulated by counsel for respondent that the defense of the proceeding was abandoned insofar as the points with respect to the guanaco hair and the importation of the mohair were concerned.

PAR. 8. The Commission therefore finds that the representations made by the respondent with respect to its coats, as set forth in paragraphs 5 and 6 hereof, are false, misleading, and deceptive.

PAR. 9. Another issue raised in the complaint is whether the name "Alpacuna" used by respondent to designate its coats is misleading, as representing or implying that the coats contain fiber obtained from the animal known as the vicuna. It is insisted by respondent that the name "Alpacuna" is merely a coined trade name made up by

combining the first five letters of the word "alpaca" with the suffix "una," that the suffix was incorporated into the name only because it provided a euphonious ending, and that the name has no reference to vicuna fiber. Respondent further insists that the name has no significance in the trade or to the purchasing public other than as a mere trade name, or possibly as indicating an alpaca content, that it is not understood by dealers or consumers as indicating that the coats contain vicuna fiber.

Respondent's position finds support in the testimony of a number of witnesses. On the other hand, a number of other witnesses, including both persons in the trade and members of the consuming public, testified that to them the name "Alpacuna" indicated that the coat contained both alpaca and vicuna fiber, the presence of vicuna fiber being implied by the "cuna" portion of the name. Upon consideration of the entire record, the Commission is of the opinion that while in some cases the name might not be understood by prospective purchasers as indicating the presence of vicuna fiber, in a substantial number of other instances it would indicate the presence of such fiber. It is undisputed that respondent's coats contain no vicuna fiber. The Commission therefore finds that the name "Alpacuna" is misleading and deceptive to a substantial portion of the purchasing public in that it represents or implies to such persons that respondent's coats contain material which they do not in fact contain.

PAR. 10. The Commission finds further that the use by the respondent of the foregoing representations with respect to its coats, including the use of the name "Alpacuna," has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the fiber content of such coats and the origin of the materials used in such coats, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's coats as a result of the erroneous and mistaken belief engendered by such representations. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors, many of whom 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 second amended complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Edward E. Reardon, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jacob Siegel 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, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's coats now designated "Alpacuna" coats, or any other coats of substantially similar composition, under whatever name sold, do forthwith cease and desist from:

1. Representing that respondent's coats contain guanaco hair.
2. Representing that the Angora goat hair or mohair used in respondent's coats is imported from Turkestan or any other foreign country.
3. Representing through the use of drawings or pictorial representations, or in any other manner, that respondent's coats contain fibers or materials which they do not in fact contain.
4. Representing that coats made of fabrics which have a cotton backing are composed entirely of wool or of wool and hair.
5. Using any advertising matter or causing, aiding, encouraging, or promoting the use by dealers of any advertising matter which purports to disclose the constituent fibers or materials of coats composed in part of cotton, unless such advertising matter clearly discloses such cotton content along with such other fibers or materials.
6. Using the word "Alpacuna," or any other word which in whole or in part is indicative of the word "vicuna," to designate or describe respondent's coats; or otherwise representing, directly or by implication, that respondent's coats contain vicuna fiber.

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.

Commissioner Freer dissenting in part:

Commissioner Freer dissents from so much of the order as wholly prohibits the continued use of the trade name "Alpacuna" for the reason that this trade name, which has been in use for more than 13 years, is a valuable business asset, and is neither deceptive per se, nor is the testimony concerning its tendency or capacity to deceive sufficiently clear and convincing as to render such prohibition of its use necessary in the public interest.

A majority of the Commission do not agree with either Commissioner Freer's statements of fact or his conclusions of law.

Order

IN THE MATTER OF
LEE BOYER'S CANDY

MODIFIED CEASE AND DESIST ORDER

Docket 4265. Order, April 28, 1943

Modified order, pursuant to provisions of section 5 (i) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on August 6, 1941, 33 F. T. C. 881, and in which Circuit Court of Appeals for Ninth Circuit, on May 25, 1942, in *Lee Boyer's Candy v. Federal Trade Commission*, 128 F. (2d) 261, 34 F. T. C. 1857, rendered its opinion and on said date issued also its final decree modifying said order of the Commission in certain particulars and affirming the same as modified—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of candy, to cease and desist from selling the same through lottery schemes, push or pull cards, punchboards, etc., as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on August 6, 1941, the Commission made its findings as to the facts herein and concluded therefrom that the respondent, Lee Boyer's Candy, a corporation, has violated the provisions of section 5 of the Federal Trade Commission Act, and issued and subsequently served its order to cease and desist; and it further appearing that on May 25, 1942, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion, and on May 25, 1942, issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree.

It is ordered, That the respondent, Lee Boyer's Candy, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Selling or distributing any merchandise so packed and assembled that sales of said merchandise to the public are to be made by means of a game of chance, gift enterprise or lottery scheme;

Order

36 F. T. C.

(2) Supplying to or placing in the hands of others assortments of any merchandise, together with push or pull cards, punchboards or other devices, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise or lottery scheme;

(3) Supplying to or placing in the hands of others push or pull cards, punchboards or other devices, which said push or pull cards, punchboards or other devices are to be used or may be used in the sale or distribution of said merchandise to the public at retail;

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

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

Syllabus

IN THE MATTER OF
JOHN F. TROMMER, INC.

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

Docket 4689. Complaint, Jan. 29, 1942—Decision, Apr. 28, 1943

Where a corporation engaged in the brewing of beer and in the competitive interstate sale and distribution thereof, including its "White Label" beer sold by it to retail at 10 cents in a "no deposit" bottle in the common 12-ounce size; having decreased the content an ounce as a means of retaining the "even price" of 10 cents as a strong selling point, following the effective date of the new Federal tax of 1 dollar per barrel on malt beverages, and adopted an 11-ounce bottle similar to the 12-ounce theretofore employed, though labeled inconspicuously with the true content—

Represented or implied in trade paper advertisements—irrespective of captions "TROMMER ABSORBS NEW DEFENSE TAX" and "TROMMER ABSORBS TAX ON SOME WHITE LABEL," responsibility for which it disclaimed—that there had been no increase in the price of said beer and that dealers and consumers would continue to obtain the same quantity they had been receiving before the new tax, through statement "There has been no increase in wholesale or retail prices of Trommer's White Label beer as a result of the Federal Tax bill * * * The * * * 'Family Pak,' a carton of 10 no-deposit bottles of White Label, continues to sell at \$1 with the price to the retailer also remaining unchanged" and statement in ensuing issue "The consumer price of * * * White Label beer in the no-deposit bottle has remained at 10 cents in grocery stores in spite of the Federal rearmament tax * * * The price of this package has not been increased to the retailer," and "The * * * 'Family Pak' * * * continues to sell at \$1, the price in the metropolitan area before the new * * * tax, and the price to the retailer on this package also remains unchanged";

With result, contributed to through use of bottles which to casual observer were indistinguishable from the former 12-ounce container, expected by many dealers and members of the public in the absence of information to the contrary—and notwithstanding label on the new bottle and inconspicuous changes in advertising cards, cartons, and cases and on order blanks and envelopes, which did not serve adequately to correct the erroneous impression created, as aforesaid, and in the case of said blanks and invoices reached only dealers—that a substantial number thereof and portion of the public were led to believe that it was in fact absorbing the said new tax, and with tendency and capacity to mislead said dealers and public with respect to the actual price of its beer and the quantity obtainable for the price paid, and to cause them to purchase substantial quantities as a result of the mistaken belief so engendered, whereby substantial trade was diverted unfairly to it from its competitors, among whom were those who did not engage in such acts or practices;

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

Complaint

36 F. T. C.

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

Mr. DeWitt T. Puckett for the Commission.

Dammann, Roche & Goldberg, of New York City, for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, John F. Trommer, Inc., is a corporation, organized under the laws of the State of New York, and is now, and for several years last past has been, engaged in brewing and selling beer. Respondent brews and sells a brand of beer labeled and otherwise advertised as "Trommer's White Label" beer. Its principal office is at Bushwick Avenue and Conway Street, Brooklyn, N. Y., and it operates a brewery at 119 Hill Street, Orange, N. J.

PAR. 2. In the course and conduct of its business as aforesaid, respondent causes, and for several years last past has caused, its said product, when sold, to be transported from its said place of business in Brooklyn, N. Y., or from its brewery in Orange, N. J., to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

The respondent is now, 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 beer in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For many years last past most beer, other than draft beer, has been offered for sale and sold at retail in 12-ounce bottles or cans for the price of 10 cents per bottle or can. Consequently, the purchasing public has come to expect a 12-ounce bottle or can of beer for the retail price of 10 cents in most cases.

PAR. 4. For several years prior to July 1, 1940, the effective date of the Federal "Defense Tax for Five Years" which increased the tax of fermented malt beverages, the respondent, in the course and con-

duct of its business as aforesaid, caused its "Trommer's White Label" beer to be packed in bottles having labels affixed thereto reading in part "Contents 12 Fl. Oz." Thus packed and labeled, said beer was sold to retail beer dealers located in different States who, in turn, sold the same to their customers for 10 cents per bottle, or in closed cartons containing 10 bottles for the price of 1 dollar.

PAR. 5. On or about July 1, 1940, the respondent reduced the amount of beer contained in each of its aforesaid bottles from 12 ounces to 11 ounces but no noticeable change was made in the size or shape of the bottles. Such bottles approximate in size, shape, and capacity 12-ounce beer bottles generally used in the beer trade. Although the amount of beer contained in respondent's 11-ounce bottles is stated on the labels attached thereto, such statement does not serve adequately to place purchasers on notice of the change in volume.

PAR. 6. In the course and conduct of its business operations, as aforesaid, the respondent caused to be disseminated false advertisements concerning its said beer 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 caused to be disseminated false advertisements concerning its said beer by various means for the purpose of inducing, 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 caused to be disseminated, as hereinabove set forth, by the United States mails and by advertisements in trade papers and in other advertising literature, are the following:

TROMMER ABSORBS TAX ON SOME WHITE LABEL

The consumer price of Trommer's White Label beer in the no-deposit bottle has remained at 10 cents in grocery stores, in spite of the Federal rearmament tax, it has been announced by John F. Trommer, Inc. The price of this package has not been increased to the retailer. The Trommer "Family-Pak," a closed carton of 10 no-deposit bottles of White Label beer, also continues to sell at \$1. The price in the Metropolitan area before the new Federal tax, and the price to the retailer on this package also remains unchanged.

PAR. 7. Through the use of the aforesaid representations and others of similar import not specifically set out herein, the respondent has represented, directly or by implication, that the price charged for its "Trommer's White Label" beer and the amount of beer contained in each bottle remained the same subsequent to the imposition of the Federal tax referred to in said advertising matter. In truth and in fact the price per bottle and the amount of beer contained therein did

not remain the same subsequent to the effective date of the aforementioned Federal tax as the said tax was more than compensated for due to the substantial reduction in the amount of beer contained in each bottle sold by respondent subsequent to that date.

PAR. 8. Many of respondent's competitors do not engage in the acts, practices, and methods set out herein and still sell the 12-ounce bottle and can of beer, but have increased the price thereof to provide for the cost to them of the Defense Tax.

PAR. 9. The use by the respondent of the acts and practices herein set forth had and now has a capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into an erroneous and mistaken belief that the price of its said beer and the volume of beer contained in each bottle had not been changed, and into the purchase of substantial quantities of said product because of such erroneous and mistaken belief. Furthermore, the respondent's aforesaid practice has placed and is now placing in the hands of retail beer dealers a means which may be used to deceive the consuming public as to the price of its bottled beer and the quantity of beer contained in each bottle. In consequence trade has been diverted unfairly to the respondent from its competitors with the result that substantial injury has been done and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. 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 January 29, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, John F. Trommer, 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, 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, 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, John F. Trommer, Inc., is a corporation, organized under the laws of the State of New York, with its principal office located at Bushwick Avenue and Conway Street, Brooklyn, N. Y. Respondent is now and for a number of years last past has been engaged in the brewing of beer, and in the sale and distribution of such beer to dealers. Respondent operates breweries both at its place of business in Brooklyn, N. Y., and at 119 Hill Street, Orange, N. J.

PAR. 2. In the course and conduct of its business, respondent causes and has caused its beer, when sold, to be transported from its places of business in New York and New Jersey 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 beer in commerce among and between the various 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 partnerships and individuals, engaged in the sale and distribution of beer in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Among the various brands of beer sold by respondent is a brand designated by it as "White Label" beer. This beer was placed on the market many years ago, and has been one of respondent's most successful products. Until 1938, White Label beer was sold in various types of bottles and at different prices, but in 1938 respondent adopted the policy of selling this particular beer in a "no deposit" bottle to retail at the price of 10 cents per bottle. In the brewing industry, the term "no-deposit bottle" means that the bottle is nonreturnable and that no deposit is required from the consumer when the beer is purchased from the retail dealer.

Up until July 1, 1940, White Label beer was sold in bottles containing 12 fluid ounces. On that date, however, the new Federal tax of 1 dollar per barrel on malt beverages became effective, and respondent was confronted with the question whether the price of White Label should be increased or a reduction made in the contents of the bottle. After making inquiry among some of its dealers, respondent decided to adopt the latter alternative inasmuch as it was felt that the "even price" of 10 cents for the beer was a strong selling point with the public. Upon reaching this decision, respondent arranged with the concern which manufactured its bottles to supply a bottle having a capacity of 11 fluid ounces rather than 12 fluid ounces. While the actual measurements of the two bottles differed slightly, the bottles were substantially the same in general appearance and the reduction in the capacity was not discernible except upon close inspection or comparison. When the 11-ounce bottle was placed on the market, respondent discontinued entirely the use of the 12-ounce no-deposit bottle.

(Respondent has at all times continued to sell some of its White Label in a 12-ounce bottle, but this is an entirely different type of bottle, being a "tall" or "pouring" bottle and being intended for sale to taverns, restaurants, and other places where beer is sold for consumption on the premises. There has been no standard or customary retail price for this type of bottle, the price in each case depending largely upon the nature of the particular establishment serving the beer and the decision of the establishment as to the price to be charged. This type of bottle is not involved in the present proceeding.)

PAR. 5. Shortly after reaching its decision to reduce the contents of its no-deposit bottle to 11 ounces, respondent on July 13, 1940, addressed the following memorandum to its sales force:

IMPORTANT * * * ALL SALESMEN

When the new Federal tax appeared imminent, we studied carefully the possible effect on White Label in no-deposit bottles. The cost of this package—imported hops, bottles, cartons—had been rising for a long time—and we were beginning to doubt our ability to continue it as a 10¢ package. To increase the cost would destroy the even-price advantage this bottle has enjoyed—and the \$1.00 flat price of "Family-Pak".

Therefore we decided to make the White Label no-deposit bottle an 11-ounce container, avoiding any increase in cost to consumer or retailer—we absorb the new Federal tax.

White Label at 11 ounces is still the biggest buy in the American beer market. It still is a premium Malt Beer, brewed solely of fancy malt and costly imported hops.

It should sell at a faster pace at 10¢ than it has ever sold in the past (now that canned beer sells at 11¢).

Please re-sell the story of White Label to every dealer and urge him to get the bigger profits of faster turnover at 10¢ straight (Resp. Ex. No. 10).

On July 16, 1940, there appeared in a trade paper known as the "Grocer-Graphic," which had a circulation of about sixteen thousand among retail grocers and delicatessen operators in the New York City trade area (which includes New York City and portions of New Jersey and Connecticut), the following news item:

TROMMER ABSORBS NEW DEFENSE TAX

There has been no increase in wholesale or retail prices of Trommer's White Label beer as a result of the Federal defense tax bill, it has been announced by John F. Trommer, Inc. The Trommer "Family Pak," a carton of 10 no-deposit bottles of White Label continues to sell at \$1 with the price to the retailer also remaining unchanged (Resp. Ex. No. 17).

This item, while not actually written by respondent, was based upon information supplied by respondent to the publisher. Respondent denies particularly that it authorized the use of the caption, "Trommer Absorbs New Defense Tax."

In the next issue of this same paper, published on July 30, 1940, the following appeared, also as a news item:

TROMMER ABSORBS TAX ON SOME WHITE LABEL

The consumer price of Trommer's White Label beer in the no-deposit bottle has remained at 10 cents in grocery stores in spite of the Federal rearmament tax, it has been announced by John F. Trommer, Inc. The price of this package has not been increased to the retailer. The Trommer "Family-Pak," a closed carton of 10 no-deposit bottles of White Label beer, also continues to sell at \$1, the price in the metropolitan area before the new Federal tax, and the price to the retailer on this package also remains unchanged (Com. Ex. No. 5).

The text of this item, exclusive of the caption, was prepared and supplied to the paper by respondent. Here, as in the case of the earlier item, respondent disclaims any responsibility for the caption. Respondent's purpose in supplying this item for publication was to correct what it considered an erroneous implication of the earlier item. The earlier item did not, in respondent's opinion, distinguish sufficiently between the no-deposit 10-cent bottle of White Label and the tall or pouring bottle, the price of which had been increased by respondent to cover the new tax.

It appears from the record that these two news items attracted widespread attention in the trade and caused considerable confusion, due to the failure of the items to make any reference to the fact that the contents of the no-deposit bottle had been reduced from 12 to 11 ounces. Respondent's competitors (most of whom were continuing to use a 12-ounce bottle and had increased the price to cover the tax) experienced difficulty in meeting the competitive situation thus created.

A third issue of the trade paper, which was published on August 13, 1940, carried a news item which disclosed the actual circumstances surrounding the continuance of the 10-cent price. This item read as follows:

NOW 11 OUNCES IN TROMMER BREWERY

NO-DEPOSIT PACK

Contents of the no-deposit bottles of Trommer's White Label beer have been reduced to 11 ounces since the imposition of a Federal defense tax on July 1. For this reason the John F. Trommer Co. has not increased wholesale prices on this container unit nor have the retail prices on these been increased. A story, released by the Company and published in this newspaper on July 30, did not state that this change in contents had taken place (Resp. Ex. No. 18).

Respondent, on August 8, 1940, also issued the following letter to some four thousand retail dealers in the New York trade area:

Several inquiries have reached us regarding the contents of our White Label no-deposit bottle, and we are glad to clarify this matter.

White Label is brewed of costly imported Malt. The price of this material has been rising constantly. We had been concerned over this, because the public knows White Label has been a 10¢ seller for years and we were afraid we would have to increase its price. Then came the new Federal tax of \$1.00.

We are confronted with the prospect of destroying the "even-money" quick-sale and quick-turnover features of not only individual bottles, but also the even-money feature of the 10-bottle Family-Pak. After considerable study we determined that *your* interest and the consumers' interest would best be served by reducing the contents merely one ounce to eleven ounces; by our absorbing the Federal tax, and thereby continuing the consumer price of White Label at 10¢ in single bottles and \$1.00 in the Family-Pak.

We are sure every retailer who knows that quick turnover at a fair profit is more profitable than large profits and only occasional sales, will welcome his opportunity to be able to continue to give his customers White Label at the same old price of 10¢ per bottle (Resp. Ex. No. 15).

The label on the new type of bottle contained, in small type, the legend "Contents 11 fl. oz." Certain advertising cards used by respondent included a picture of the new bottle and label, and respondent also made certain changes in the wording on its cartons and cases indicating that the bottles were "11 oz. bottles." Similar changes were also made on respondent's order blanks and invoices.

(In May 1942, the War Production Board issued an order prohibiting the use of beer containers of less than 12 fluid ounce capacity, and respondent thereupon discontinued the use of the 11-ounce bottle and reverted to the use of a 12-ounce deposit bottle, increasing its price to cover the increased content of the bottle.)

PAR. 6. It is insisted by respondent that the record, considered as a whole, demonstrates that respondent had no intention of misleading its dealers or the public with respect to the reduction in the content of

its bottles, and it is particularly urged that respondent should not be held responsible for the captions appearing on the first two news items in the trade paper to the effect that the new tax was being "absorbed" by respondent. The Commission is of the opinion, however, that, aside from the captions, the items were misleading in that they represented or implied that there had been no increase in the price of respondent's beer, and that both dealer and consumer would continue to obtain for the regular price the same quantity of beer as they had been receiving before the imposition of the new tax. Assuming that respondent did not authorize the specific statement in the caption of the news items that respondent had "absorbed" the tax, the items, independent of the caption, could not but have the effect of leading a substantial number of dealers, and through such dealers a substantial portion of the public, to believe that respondent was in fact assuming the entire burden imposed by the new tax—that is, was "absorbing" it.

The Commission is of the further opinion that this result was contributed to through the use of bottles which were to the casual observer indistinguishable from the former bottles which contained 12 ounces rather than 11 ounces. It appears from the testimony of respondent and the manufacturer of the bottles that it was desirable, both from the viewpoint of the cost of the bottle and in order to obviate the necessity of alterations in respondent's bottling machinery, that the same general type of bottle be retained. Assuming this to be true, it nevertheless appears that the retention of the same type of bottle furthered, to some extent at least, the erroneous impression created by the news items. Of significance also in this connection is the fact that the 12-ounce bottle was in rather general use in the industry, and in the absence of information to the contrary many dealers and members of the public expected a bottle of that capacity.

The Commission is also of the opinion that the disclosure on the label and on the cartons, cases, and advertising cards of the actual contents of the new bottle did not serve adequately to correct the impression created by the news items, as the statements making the disclosure were in inconspicuous type or lettering and in many cases would not be observed by the ordinary purchaser, particularly in view of the similarity of the old and new bottles. With respect to the disclosure in the order blanks and invoices, here also the statements as to the capacity of the bottle were inconspicuous, and moreover, these statements reached only the dealers and not the public.

PAR. 7. The Commission therefore finds that the representations made or caused to be made by respondent through the trade paper were erroneous and misleading, and that the use of these representations had the tendency and capacity to mislead a substantial number of

Order

36 F. T. C.

dealers and members of the public with respect to the actual price of respondent's beer and the quantity of such beer obtainable for the price paid, 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. In consequence thereof, substantial trade was diverted unfairly to the respondent from its competitors, among whom were those who did not engage in such acts or 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 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, John F. Trommer, 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 beer 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 is paying or absorbing any tax on its beer, when such purported payment or absorption is in fact compensated for, in whole or in part, by a reduction in the capacity of the containers in which such beer is sold, or by a reduction in the quantity of beer placed in such containers.

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
PARKER-McCRORY MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4707. Complaint, Feb. 10, 1942—Decision, Apr. 29, 1943¹*

Where a corporation engaged in the manufacture and competitive interstate sale of its electric-fence controllers, designated as "Parmak Electric Fencers"; by advertisements in newspapers and trade journals, and by means of folders, pamphlets, circular letters, and other advertising media distributed generally to prospective purchasers, directly or by implication—

- (a) Represented that the use of a single wire with its electric-fence controller would positively hold all livestock, and that its electric-fence controller would hold livestock as effectively as a steel or concrete enclosure; and was a positive, sure, and certain method to confine livestock, would prevent its escape under all conditions, and would hold the worst of fence breakers; and
- (b) Represented that use of said product cut fencing costs to less than \$10 per mille and effected a saving of 90 percent in fencing costs;

Facts being that said "Parmak Electric Fencer" equipped with a single wire would not confine any animal of a size which would permit it readily to pass under or over the wire without coming in contact therewith, or any animal whose natural covering or coat would insulate it from electric shock at the point of contact; nor confine fence breakers unless said fence breakers had received prior and proper training; or otherwise accomplish economies and results as above claimed therefor;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such misleading representations were true and into the purchase of said product because of such erroneous belief, whereby trade was diverted unfairly to it from its competitors, many of whom did not misrepresent their products; to the substantial injury of competition:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Alfred D. Hillman, of Kansas City, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act. and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Parker-McCrory Manufacturing Co., a corporation, hereinafter referred to as re-

¹ Findings as to the facts and order to cease and desist issued by the Commission on Jan. 13, 1943 (not published), were vacated and set aside by the Commission on Mar. 20, 1943.

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, Parker-McCrory Manufacturing Co., is a corporation, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 2609-2615 Walnut Street, Kansas City, Mo.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing and selling electric-fence controllers, designated as "Parmak Electric Fencers." Respondents causes its said product, when sold by it, to be transported from its aforesaid place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said electric-fence controllers, designated as "Parmak Electric Fencers," in commerce among and between the various 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 individuals and with firms and corporations engaged in the sale and distribution of electric-fence controllers in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said electric-fence controllers, the respondent has circulated and is now circulating among prospective purchasers throughout the United States, by United States mails, by advertisements inserted in newspapers and trade journals, and by means of advertising folders, pamphlets, circular letters, and other advertising media, distributed generally to prospective purchasers, many false, misleading, and deceptive statements and representations concerning its said product. Among and typical of such statements and representations, are the following:

A single wire on light stakes three rods apart holds the stock.

Cuts fencing costs to less than \$10.00 per mile.

Save up to 90% of fencing.

One wire on light stakes holds stock like steel and concrete.

Gives a sting that holds the stock just as surely as any fence you ever built.

The dry weather intensifier has increased voltage and affords positive stopping power under all weather conditions.

See how a single wire holds the worst fence breakers.

PAR. 5. Through the use of statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly or by implication, that the use of a single wire with its electric-fence controller will positively hold all livestock; that the use of said product cuts fencing costs to less than \$10 per mile; that by using said product, a saving in fencing costs of 90 percent is effected; that its electric-fence controller will hold livestock as effectively as a steel or concrete-enclosure; that its electric-fence controller is a positive, sure, or certain method to confine livestock and will prevent the escape of livestock under all conditions; that its electric-fence controller will hold the worst fence breakers.

PAR. 6. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's Parmak Electric Fencer equipped with a single wire will not confine all livestock and particularly will not confine any animal of a size which would permit it to readily pass under or over the wire without coming in contact with the same, and will not confine any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its body that would come in contact with the wire. The use of said product will not cut fencing costs to less than \$10 per mile and will not effect a saving of 90 percent in fencing costs, under all situations, conditions, and circumstances. An electric-fence controller cannot confine animals as effectively as a fence of concrete or steel. The use of respondent's electric-fence controller is not a positive, certain, or sure method of confining livestock and will not prevent escape of livestock under all conditions. An electric fence equipped with respondent's electric-fence controllers will not confine fence breakers and will not confine animals of any kind or nature without prior and proper training of such animals by causing them to come into contact with a wire or wires charged with electricity.

PAR. 7. The use by the respondent of the foregoing false, misleading, and deceptive representations and statements with respect to its said product has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and into the purchase of respondent's product because of said erroneous and mistaken belief. Thereby trade has been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent the qualities, efficiency, and characteristics of their products. As a result, substantial injury has been done, and is being done, by the respondent to competition in

commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of 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 10, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Parker-McCrory Manufacturing Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 2, 1942, the respondent filed its answer. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent through its counsel and Richard P. Whiteley, Assistant Chief Counsel, for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Parker-McCrory Manufacturing Co., is a corporation, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 2609-2615 Walnut Street, Kansas City, Mo.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing and selling electric-fence controllers, designated as "Parmak Electric Fencers." Respondent causes its said product, when sold by it, to be transported

from its aforesaid place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said electric-fence controllers, designated as "Parmak Electric Fencers," in commerce among and between the various 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 individuals and with firms and corporations engaged in the sale and distribution of electric-fence controllers in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said electric-fence controllers, the respondent has circulated among prospective purchasers throughout the United States, by United States mails, by advertisements inserted in newspapers and trade journals, and by means of advertising folders, pamphlets, circular letters, and other advertising media, distributed generally to prospective purchasers, many misleading and deceptive statements and representations concerning its said product. Among and typical of such statements and representations are the following:

A single wire on light stakes three rods apart holds the stock.

Cuts fencing costs to less than \$10.00 per mile.

Save up to 90% of fencing.

One wire on light stakes holds stock like steel and concrete.

Gives a sting that holds the stock just as surely as any fence you ever built.

The dry weather intensifier has increased voltage and affords positive stopping power under all weather conditions.

See how a single wire holds the worst fence breakers.

PAR. 5. Through the use of statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly or by implication, that the use of a single wire with its electric-fence controller will positively hold all livestock; that the use of said product cuts fencing costs to less than \$10 per mile; that by using said product, a saving in fencing cost of 90% is effected; that its electric-fence controller will hold livestock as effectively as a steel or concrete enclosure; that its electric-fence controller is a positive, sure, and certain method to confine livestock and will prevent the escape of livestock under all conditions; that its electric-fence controller will hold the worst fence breakers.

PAR. 6. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's "Parmak

Electric Fencer" equipped with a single wire will not confine all livestock and particularly will not confine any animal of a size which would permit it to readily pass under or over the wire without coming in contact with the same, and will not confine any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its body that would come in contact with the wire. The use of said product will not cut fencing costs to less than \$10 per mile and will not effect a saving of 90 percent in fencing costs, under all situations, conditions, and circumstances. An electric-fence controller cannot confine animals as effectively as a fence of concrete or steel. The use of respondent's electric-fence controller is not a positive, certain, or sure method of confining livestock and will not prevent escape of livestock under all conditions. An electric fence equipped with respondent's electric-fence controllers will not confine fence breakers unless said fence breakers have received prior and proper training.

The respondent discontinued the practices complained of prior to the issuance of complaint herein but subsequent to the date upon which respondent was contacted by the Commission's investigators with respect to the practices charged in the complaint.

PAR. 7. The use by the respondent of the foregoing misleading and deceptive representations and statements with respect to its said device 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 misleading and deceptive statements and representations are true, and into the purchase of respondent's product because of said erroneous and mistaken belief. Thereby trade had been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent the qualities, efficiency, and characteristics of their products. As a result, substantial injury has been done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent,

and a stipulation as to the facts entered into by and between counsel for the respondent and Richard P. Whiteley, Assistant Chief Counsel, for the Federal Trade Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Parker-McCrory 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 electric-fence controller designated Parmak Electric Fencers, or any other device of substantially similar composition or possessing substantially similar properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the use of a single wire with its electric-fence controller will hold all livestock, including fence breakers; or that use of its device is a positive, sure and certain method of confining livestock.

2. That the use of its said device cuts fencing costs to less than \$10 per mile or results in a saving of 90 percent, or any other specific percentage of saving in excess of that ordinarily obtained; or that the cost of fencing through the use of said device and the savings resulting therefrom are other than is actually the fact.

3. That its said device will hold livestock as effectively as a steel or concrete enclosure.

4. That the use of said device will hold or confine fence breakers without clearly and conspicuously disclosing that such fence breakers must first have received prior and proper training.

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

IN THE MATTER OF

CHARLES D. HUSTEAD, TRADING UNDER THE NAMES
TERMINAL MESSENGER SERVICE AND PIONEER IN-
HERITANCE SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4897. Complaint, Jan. 29, 1943—Decision, Apr. 20, 1943*

Where an individual engaged in interstate sale and distribution of forms, form letters, and envelopes for use by creditors and collection agencies in obtaining information concerning debtors, some of which forms, (1) intended for use of debtor and calling for such information as his name and address and that of his employer or banker, displayed trade name, "Terminal Messenger Service" and such words and legends as "We Deliver Anything Any Time Anywhere," "Try Us On Messenger Service Distributing Package Delivery Expressing and Baggage or Rush Deliveries," "We have a prepaid package which we wish to deliver to the above named party. Send us your new address and references if you are the party who should receive this. * * *," and "If no information is available within 30 days our files will be closed" and "Satisfactory deliveries are not possible to General Delivery or Post Office Box Address"; while others (2), intended for persons other than the presumptive debtor, contained in addition to the trade name and other matter above set forth, such matter as "Can you inform us as to the present whereabouts of * * * who formerly lived at * * * We have a prepaid package which we wish to deliver to the above named party. * * *," followed by blank spaces for the debtor's name, address, employment, and employer;

Making use of a scheme under which (1) he placed upon such forms code numbers to identify to him his respective purchasers, (2) purchasers inserted the names and last known addresses of the persons concerning whom information was sought, and (3) enclosed the forms in envelopes from said purported "Terminal Messenger Service," etc., addressed to said individual, together with another envelope addressed to "Terminal Messenger Service," etc., and caused such outer envelopes and their enclosures to be delivered to aforesaid individual, who mailed them and sent replies, identified by the aforesaid code numbers, to the customers, and to each of those from whom a reply was received, a pasteboard-covered notebook of trivial value; employing substantially the same methods as above described in handling forms sent to other than alleged debtors—

- (a) Falsely represented through said forms and envelopes, and placed in the hands of his customers the means of falsely representing, directly and by implication, to the customers, debtors, and others from whom information was sought, that his place of business was in a terminal building close to a railroad station or other transportation agency, and that his business was in some fashion connected with the transportation and delivery of goods;

- (b) Falsely represented and placed in the hands of his customers the means of falsely representing, to customers, debtors and others, as above set forth, that the persons concerning whom information was sought were consignees of packages sent by someone other than himself, which were in his hands in the usual course of his business, and transportation of which had involved charges paid by the consignors, that packages were of more than the trivial value of the aforesaid notebooks, and that the requested information was sought in order to enable delivery to be made to the correct consignees; and

- (c) Falsely represented through use of the name "Terminal Messenger Service" that he was engaged in the business of delivering by messenger, goods received at the station of a railroad or other transportation agency;

When in fact the whole scheme was merely an attempt to obtain information by subterfuge, to locate and identify persons concerned for the purpose solely of assisting his customers in collecting alleged delinquent accounts, and packages to which forms referred contained merely aforesaid notebooks; and

Where said individual, engaged, as aforesaid, and making similar use of other form letters which—similarly planned to secure by subterfuge such information as debtor's present and former addresses and name of spouse and employer, position held, club membership, relatives' addresses, bank references and general description of debtor—displayed the trade name "Pioneer Inheritance Service," followed by the words "Estate Counsellors" and such matter as "Examiners of Titles * Searcher of Records * Genealogists * Correspondents in All Principal Cities of the World * Missing Heirs Located," and advised the debtor that "if the above information checks with our records, you will be communicated with by return mail," etc., and which, in case of forms intended for other than the presumptive debtor, contained such statements as, referring to debtors: "We have been asked to communicate with the above subject and our file indicates that you may be able to assist us. Can you give us the present address or refer us to a friend or relative who may be able to supply this information? This is a matter of distinct importance to the person in question," etc.—

- (d) Falsely represented thereby, and placed in the hands of his customers the means of falsely representing, to customers, debtors, and others from whom information was sought, that "Pioneer Inheritance Service" had correspondents in all principal cities of the world, acted as counsellors to those in charge of decedents' estates and to interests therein, examined titles to property, engaged in genealogical research and was a searcher of records;

- (e) Falsely represented that the persons concerning whom information was sought, had or might have interests in estates or lands which would be of financial benefit to them and concerning which said individual had knowledge; and

- (f) Falsely represented, through use of the name "Pioneer Inheritance Service," that his business bore some relation to estates and to the rights and interests of heirs thereof;

When in fact his business had nothing to do therewith, and said name was merely a disguise for the true nature thereof;

With effect of deceiving persons to whom such forms, form letters and envelopes were sent, into the erroneous belief that such representations were true, and with tendency and capacity to cause them, by reason thereof, to give information which they otherwise would not supply, and, in many instances, to incur expense for postage in connection therewith:

Complaint

36 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 methods of competition.

Mr. Randolph W. Branch for the Commission.

Mr. C. L. Clark, of Lincoln, Nebr., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Charles D. Hustead, an individual, trading under the names Terminal Messenger Service and Pioneer Inheritance Service, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Charles D. Hustead, is an individual, trading under the names Terminal Messenger Service and Pioneer Inheritance Service, with an office and principal place of business in the Stuart Building, 13 and P Streets, Lincoln, Nebr.

PAR. 2. Respondent is now, and has been for more than 5 years last past, engaged in the business of distributing and selling forms, form letters and envelopes, designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent causes the said forms, form letters, and envelopes to be transported from his aforesaid place of business in the State of Nebraska to purchasers thereof 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 forms, form letters, and envelopes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said forms sold and distributed by respondent are as exemplified by photostatic copies thereof, marked "Exhibits A and B," attached hereto and by this reference incorporated herein and made a part hereof; the said form letters are as exemplified by copies thereof, marked "Exhibits C and D," attached hereto and by this reference incorporated herein and made a part hereof.

PAR. 4. Upon the forms as exemplified by Exhibit A when they are delivered to the purchasers thereof, respondent has placed numbers, which are his code numbers and identify the customers to him. The purchasers insert on the lines indicated in the forms the names and last known addresses of the persons concerning whom information is

sought and insert the forms in envelopes, purchased by them from respondent, which they address to the persons concerning whom information is sought. Upon these envelopes in the upper left corner appears:

Return in five days to
TERMINAL MESSENGER SERVICE
Stuart Building—13th and P Streets
Lincoln, Nebraska.

With said forms are enclosed envelopes, also purchased from respondent, in the upper left corner of which appears:

Good Service Helps Your Business
Expressing and Baggage Service.

and which are addressed to:

Terminal Messenger Service
Stuart Building
Lincoln, Nebr.

Said purchasers cause the said outer envelopes, properly stamped, and their enclosures, to be delivered to respondent at his place of business aforesaid, and respondent causes them to be deposited in the United States mail. Such replies as are returned are received by respondent who identifies the customers by the code numbers heretofore mentioned and sends the replies to the proper customers. Respondent also sends to each of the persons from whom a reply is received a pasteboard covered note book approximately 3 by 5 inches in size, having approximately 32 leaves, of trivial value.

The forms exemplified by Exhibit B are given code numbers in the manner stated above, and are used when information concerning alleged debtors is sought from persons other than the debtors themselves. They are used and handled in a manner substantially identical with that in which the forms exemplified by Exhibit A are handled as hereinabove set forth.

PAR. 5. By means of the aforesaid forms and envelopes, respondent has represented and placed in the hands of his customers means of representing, directly and by implication, to customers' debtors and others from whom information concerning such debtors is sought, that respondent's place of business is in the "Terminal Building," that such building is, or is close to, a station of a railroad or other transportation agency; that respondent's business is in some fashion connected with the movement and transportation of goods and their delivery to the proper consignees and, with the handling of express shipments and travelers' baggage; that the persons concerning whom information is sought are consignees of packages sent by someone other than respondent, which packages are in the hands of respondent.

Complaint

36 F. T. C.

ent in the usual course of his transportation business; that the transportation of such packages had involved charges which had been paid by the consignors; that the packages were of more than the trivial value of the note books mentioned above and that the requested information was sought in order to enable delivery of such packages to be made to the correct consignees.

PAR. 6. Through the use of the name "Terminal Messenger Service," respondent has represented, directly and by implication, that he is engaged in the business of delivering by messenger goods received at the station of a railroad or other transportation agency when, in fact, said name is merely a disguise for the true nature of respondent's business.

PAR. 7. The aforesaid representations, both express and implied, are false and misleading. In truth and in fact, respondent's business is not in any "terminal" building, but in an office building removed from any station of a railroad or other transportation agency. Respondent's business, so far as the recipients of said forms are concerned, has nothing whatever to do with the movement and transportation of goods or their delivery to the proper consignees or the handling of express shipments or travelers' baggage. The persons with respect to whom information is sought are not consignees of packages upon which transportation charges have been paid, sent by someone other than respondent, and in the hands of respondent in the usual course of transportation business. The packages to which said forms refer were those made up by respondent containing the note-books referred to above. The whole scheme was merely an attempt to obtain information by subterfuge, and the information was sought not for the purpose of locating the whereabouts of and identifying such persons in order to effect delivery of packages but solely for the purpose of assisting respondent's customers in collecting alleged delinquent accounts.

PAR. 8. Upon the form letters as exemplified by Exhibit C when they are delivered to the purchasers thereof, respondent has placed numbers which are his code numbers and which identify the customers to him. The customers insert in the appropriate blank places the names and last known addresses of the persons concerning whom information is sought, and place the form letters in envelopes, purchased by them from respondent, which they address to the persons concerning whom information is sought. Upon these envelopes in the upper left-hand corner appears:

PIONEER INHERITANCE SERVICE
851-2-3 Stuart Building,
Lincoln, Nebraska.

With the said form letters are enclosed envelopes, also purchased from respondent, addressed as above.

Said purchasers cause the said envelopes, properly stamped, and their enclosures, to be delivered to respondent at his place of business aforesaid and respondent causes them to be deposited in the United States mail. Such replies as are returned are received by respondent who identifies the customers by the code numbers heretofore mentioned and sends the replies to the proper customers.

The forms exemplified by Exhibit D are given code numbers in the manner stated above, and are used when information concerning debtors is sought from persons other than the debtors themselves. They are used and handled in a manner substantially identical with that in which the form letters exemplified by Exhibit C are handled, as hereinabove set forth.

PAR. 9. By means of the aforesaid form letters and envelopes, respondent has represented, and placed in the hands of his customers means of representing, directly and by implication, to customers' debtors, and others from whom information concerning such debtors is sought, that "Pioneer Inheritance Service" has correspondents in all principal cities of the world, acts as counsellor to those in charge of decedents' estates or to interests therein, examines titles to property, engaged in geneological research, is a searcher of records, and that the persons concerning whom information is sought have or may have interests in estates or lands which will be of financial benefit to them concerning which respondent has knowledge.

The said representations are false and misleading. In truth and in fact, respondent in conducting the business called "Pioneer Inheritance Service" does not have correspondents in all principal cities of the world. He does not act as counsellor to those in charge of decedents' estates and is not engaged in the business of locating heirs to estates or lands or to interests therein. He does not examine titles to property or engage in geneological research or searches of records. He has no knowledge of any interests in estates or in lands to which the persons concerning whom information is sought may be entitled.

PAR. 10. Through the use of the name "Pioneer Inheritance Service," respondent has represented, directly and by implication, that his said business bears some relation to estates and to the rights and interests of heirs thereof.

Such representation is false and misleading. In truth and in fact respondent's said business has nothing whatever to do with estates or the rights or interests of persons therein, and the said name is merely a disguise for the true nature of the business.

PAR. 11. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations, and designations has had

the tendency and capacity to, and has misled and deceived many persons to whom said forms, form letters, and envelopes were sent, into the erroneous and mistaken belief that such statements, representations, and designations were true, and by reason thereof to give information which they would not otherwise have supplied, and in many instances to incur expense for postage in connection therewith.

PAR. 12. 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.

WE DELIVER ANYTHING

ANY TIME

ANYWHERE

TERMINAL MESSENGER SERVICE

Try us on
Messenger Service
Distributing
Package Delivery
Expressing and Baggage
or Rush Deliveries

Terminal Building
LINCOLN, NEBRASKA

We will give
Prompt
Efficient
Courteous
Service
Always

Name _____

Address _____

We have a prepaid package which we wish to deliver to the above named party.

Send us your new address and references if you are the party who should receive this.

Enclose find self-addressed envelope for your reply.

We are

Yours very truly,

TERMINAL MESSENGER SERVICE.

The following lines may be used for your reply:

Name _____

Present address _____

I can refer you to my employer for identification, whose name is _____

Address _____

Or my bank or banker _____

Whose address is _____

Notice

If no information is available within 30 days our files will be closed. Satisfactory deliveries are not possible to General Delivery or Post Office Box Address.

Do Not Write Here—Our Record

Date of Notice _____

Charges _____

Parcel Post _____

Express _____

File No. _____

EXPRESSING AND BAGGAGE

Exhibit A.

594

Exhibits

WE DELIVER ANYTHING

ANY TIME

ANYWHERE

TERMINAL MESSENGER SERVICE

<i>Try us on</i>	Stuart Building	<i>We will give</i>
Messenger Service	LINCOLN, NEBRASKA	Prompt
Distributing		Efficient
Package Delivery		Courteous
Expressing and Baggage		Service
or Rush Deliveries		Always

Name-----

Address-----

Can you inform us as to the present whereabouts of-----
who formerly lived at-----

We have a prepaid package which we wish to deliver to the above named party,
We are enclosing a stamped envelope and we would fully appreciate any
information you can give us regarding this party's present address or place of
employment so we can make prompt delivery of this package.

Thanking you for an early reply, we remain,

Yours very truly,

TERMINAL MESSENGER SERVICE.

Name of party-----

Present address-----

Present employment-----

Employer's address-----

Notice

If no information is avail-
able within 30 days our
files will be closed. Satis-
factory deliveries are not
possible to General Deliv-
ery or Post Office Box Ad-
dress.

Do Not Write Here—Our Record

Date of Notice-----

Charges-----

Parcel Post-----

Express-----

File No.-----

EXPRESSING AND BAGGAGE

Exhibit B.

(Copy)

Examiners of Titles ** Searcher of Records ** Genealogists ** Correspondents
In All Principal Cities of the World

MISSING HEIRS LOCATED

PIONEER INHERITANCE SERVICE

ESTATE COUNSELLORS

Stuart Building, Lincoln, Nebraska

Refer to File Number

Subject:

We have been endeavoring to communicate with a person of the above name
and our investigations lead us to believe that you are the party.

Exhibits

36 F. T. C.

This is a matter of distinct importance to the individual in question and that we may make certain you are the one, please answer the following questions:

Full name-----Age-----
 Residence address (present)-----
 Residence address (previous)-----
 (List other former addresses on reverse side)
 Wife's or husbands full name if married-----
 Name of employer-----Position held-----
 Business address-----
 (List former employers on reverse side)
 Member of any Club, lodge or society-----
 Nearest relative-----Relationship-----
 Address-----
 Bank reference-----
 General description of yourself-----

If the above information checks with our records, you will be communicated with by return mail. Use envelope enclosed for your reply.

Very truly yours,

PIONEER INHERITANCE SERVICE.

Exhibit C.

By

(Copy)

Examiners of Titles ** Searcher of Records ** Genealogists ** Correspondents
 in All Principal Cities of the World

MISSING HEIRS LOCATED

PIONEER INHERITANCE SERVICE

ESTATE COUNSELLORS

Stuart Building, Lincoln, Nebraska

Refer to File Number

Subject:

We have been asked to communicate with the above subject and our file indicates that you may be able to assist us.

Can you give us the present address or refer us to a friend or relative who may be able to supply this information?

This is a matter of distinct importance to the person in question and an early reply will be appreciated. Please answer the question below as fully as possible and mail in the envelope enclosed.

Very truly yours,

PIONEER INHERITANCE SERVICE.

By

Full name of above subject-----
 Present residence address-----
 Name of present employer-----
 Present business address-----

Exhibit D.

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, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Charles D. Hustead, an individual, trading under the names Terminal Messenger Service and Pioneer Inheritance Service, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On March 12, 1943, 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 hearings 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. Respondent, Charles D. Hustead, is an individual, trading under the names Terminal Messenger Service and Pioneer Inheritance Service, with an office and principal place of business in the Stuart Building, Thirteenth and P Streets, Lincoln, Nebr.

PAR. 2. Respondent, is now, and has been for more than 5 years last past, engaged in the business of distributing and selling forms, form letters, and envelopes, designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent causes the forms, form letters, and envelopes to be transported from his place of business in the State of Nebraska to purchasers thereof in various States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in his forms, form letters, and envelopes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The forms sold and distributed by respondent are as exemplified by copies thereof marked "Exhibits A and B," attached hereto and by this reference incorporated herein and made a part hereof. The form letters are as exemplified by copies thereof marked "Exhibits C and D," attached hereto and by this reference incorporated herein and made a part hereof.

PAR. 4. Upon the forms as exemplified by Exhibit A, when they are delivered to the purchasers thereof, respondent has placed numbers, which are his code numbers and identify the customers to him. The purchasers insert on the lines indicated in the forms the names

and last known addresses of the persons concerning whom information is sought, and insert the forms in envelopes purchased by them from respondent, which they address to the persons concerning whom information is sought. Upon these envelopes, in the upper left-hand corner, appears:

Return in five days to
TERMINAL MESSENGER SERVICE
Stuart Building—13th and P Streets
Lincoln, Nebraska

With such forms are enclosed envelopes, also purchased from respondent, in the upper left-hand corner of which appears:

Good Service Helps Your Business
Expressing and Baggage Service

and which are addressed to:

Terminal Messenger Service
Stuart Building
Lincoln, Nebr.

The purchasers cause such outer envelopes, properly stamped, and their enclosures, to be delivered to respondent at his place of business, and respondent causes them to be deposited in the United States mail. Such replies as are returned are received by respondent, who identifies the customers by the code numbers heretofore mentioned and sends the replies to the proper customers. Respondent also sends to each of the persons from whom a reply is received a pasteboard-covered notebook approximately 3 by 5 inches in size, having approximately 32 leaves, of trivial value.

The forms exemplified by Exhibit B are given code numbers in the manner stated above, and are used when information concerning alleged debtors is sought from persons other than the debtors themselves. They are used and handled in a manner substantially identical with that in which the forms exemplified by Exhibit A are handled, as hereinabove set forth.

PAR. 5. By means of these forms and envelopes, respondent represents and places in the hands of his customers means of representing directly and by implication, to customers' debtors and others from whom information concerning such debtors is sought, that respondent's place of business is in a "terminal" building; that such building is or is close to, a station of a railroad or other transportation agency that respondent's business is in some fashion connected with the movement and transportation of goods and their delivery to the proper consignees, and with the handling of express shipments and travelers baggage; that the persons concerning whom information is sought are consignees of packages sent by someone other than respondent, which

packages are in the hands of respondent in the usual course of his transportation business; that the transportation of such packages has involved charges which have been paid by the consignors; that the packages are of more than the trivial value of the notebooks mentioned above; and that the requested information is sought in order to enable delivery of such packages to be made to the correct consignees.

PAR. 6. The aforesaid representations, both express and implied, are false and misleading. In truth and in fact, respondent's business is not in any "terminal" building, but in an office building removed from any station of a railroad or other transportation agency. Respondent's business, so far as the recipients of the forms are concerned, has nothing whatever to do with the movement and transportation of goods or their delivery to the proper consignees, or the handling of express shipments or travelers' baggage. The persons with respect to whom information is sought are not consignees of packages upon which transportation charges have been paid, sent by someone other than respondent, and in the hands of respondent in the usual course of a transportation business. The packages to which such forms refer are those made up by respondent containing the notebooks referred to above. The whole scheme is merely an attempt to obtain information by subterfuge, and the information is sought not for the purpose of locating the whereabouts of and identifying such persons in order to effect delivery of packages but solely for the purpose of assisting respondent's customers in collecting alleged delinquent accounts.

PAR. 7. Through the use of the name "Terminal Messenger Service," respondent represents, directly and by implication, that he is engaged in the business of delivering, by messenger, goods received at the station of a railroad or other transportation agency, when in fact such name is merely a disguise for the true nature of respondent's business.

PAR. 8. Upon the form letters as exemplified by Exhibit C, when there are delivered to the purchasers thereof, respondent has placed numbers, which are his code numbers and which identify the customers to him. The customers insert in the appropriate blank places the names and last known addresses of the persons concerning whom information is sought, and place the form letters in envelopes purchased by them from respondent, which they address to the persons concerning whom information is sought. Upon these envelopes, in the upper left-hand corner, appears:

PIONEER INHERITANCE SERVICE
851-2-3 Stuart Building,
Lincoln, Nebraska.

With these form letters are enclosed envelopes, also purchased from respondent, addressed as above.

The purchasers cause such envelopes, properly stamped, and their enclosures, to be delivered to respondent at his place of business, and respondent causes them to be deposited in the United States mail. Such replies as are returned are received by respondent, who identifies the customers by the code numbers heretofore mentioned and sends the replies to the proper customers.

The forms exemplified by Exhibit D are given code numbers in the manner stated above, and are used when information concerning debtors is sought from persons other than the debtors themselves. They are used and handled in a manner substantially identical with that in which the form letters exemplified by Exhibit C are handled, as hereinabove set forth.

PAR. 9. By means of these form letters and envelopes, respondent represents and places in the hands of his customers means of representing, directly and by implication, to customers' debtors and others from whom information concerning such debtors is sought, that "Pioneer Inheritance Service" has correspondents in all principal cities of the world, acts as counsellor to those in charge of decedents' estates or to interests therein, examines titles to property, engages in genealogical research, is a searcher of records, and that the persons concerning whom information is sought have or may have interests in estates or lands which will be of financial benefit to them concerning which respondent has knowledge.

These representations are false and misleading. In truth and in fact, respondent, in conducting the business called "Pioneer Inheritance Service," does not have correspondents in all principal cities of the world. He does not act as counsellor to those in charge of decedents' estates, and is not engaged in the business of locating heirs to estates or lands or to interests therein. He does not examine titles to property or engage in genealogical research or searches of records. He has no knowledge of any interests in estates or in lands to which the persons concerning whom information is sought may be entitled.

PAR. 10. Through the use of the name "Pioneer Inheritance Service," respondent represents, directly and by implication, that his business bears some relation to estates and to the rights and interests of heirs thereof.

Such representation is false and misleading. In truth and in fact, respondent's business has nothing whatever to do with estates or the rights or interests of persons therein, and such name is merely a disguise for the true nature of the business.

PAR. 11. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations, and designations has the tendency and capacity to and does mislead and deceive many persons

594

Exhibits

to whom such forms, form letters, and envelopes are sent into the erroneous and mistaken belief that such statements, representations, and designations are true; and the tendency and capacity to cause such persons, by reason thereof, to give information which they otherwise would not supply, and, in many instances, to incur expense for postage in connection therewith.

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.

EXHIBIT A

WE DELIVER ANYTHING ANY TIME ANYWHERE

TERMINAL MESSENGER SERVICE

<i>Try us on</i>	Terminal Building	<i>We will give</i>
Messenger Service	LINCOLN, NEBRASKA	Prompt
Distributing		Efficient
Package Delivery		Courteous
Expressing and baggage		Service
or Rush Deliveries		Always

Name _____

Address _____

We have a prepaid package which we wish to deliver to the above named party. Send us your new address and references if you are the party who should receive this.

Enclosed find self-addressed envelope for your reply.

We are

Yours very truly,

TERMINAL MESSENGER SERVICE.

The following lines may be used for your reply:

Name _____

Present address _____

I can refer you to my employer for identification, whose name is _____

Address _____

Or my bank or banker _____

Whose address is _____

Notice

If no information is available within 30 days our files will be closed. Satisfactory deliveries are not possible to General Delivery or Post Office Box Address.

Do Not Write Here—Our Record

Date of Notice _____

Charges _____

Parcel Post _____

Express _____

File No. _____

EXPRESSING AND BAGGAGE

Exhibits

36 F. T. C.

EXHIBIT B**WE DELIVER ANYTHING****ANY TIME****ANYWHERE****TERMINAL MESSENGER SERVICE**

Try us on
 Messenger Service
 Distributing
 Package Delivery
 Expressing and Baggage
 or Rush Deliveries

Stuart Building
 LINCOLN, NEBRASKA

We will give
 Prompt
 Efficient
 Courteous
 Service
 Always

Name.....

Address.....

Can you inform us as to the present whereabouts of.....
 who formerly lived at.....

We have a prepaid package which we wish to deliver to the above named party.
 We are enclosing a stamped envelope and we would fully appreciate any information you can give us regarding this party's present address or place of employment so we can make prompt delivery of this package.

Thanking you for an early reply, we remain,

Yours very truly,

TERMINAL MESSENGER SERVICE

Name of party.....

Present address.....

Present employment.....

Employer's address.....

Notice

If no information is available within 30 days our files will be closed. Satisfactory deliveries are not possible to General Delivery or Post Office Box Address.

Do not Write Here—Our Record

Date of Notice.....

Charges.....

Parcel Post.....

Express.....

File No.....

EXPRESSING AND BAGGAGE**EXHIBIT C****Examiners of Title * Searcher of Records * Genealogists *****Correspondents in All Principal Cities of the World****MISSING HEIRS LOCATED****PIONEER INHERITANCE SERVICE****ESTATE COUNSELLORS**

Stuart Building, Lincoln, Nebraska

Refer to File Number

Subject:

We have been endeavoring to communicate with a person of the above name and our investigations lead us to believe that you are the party.

594

Exhibits

This is a matter of distinct importance to the individual in question and that we may make certain you are the one, please answer the following questions:

Full name----- Age-----
 Resident address (present)-----
 Resident address (previous)-----
 (List other former addresses on reverse side)
 Wife's or husband's full name if married-----
 Name of employer----- Position held-----
 Business address-----
 (List former employers on reverse side)
 Member of any Club, lodge or society-----
 Nearest relative----- Relationship-----
 Address-----
 Bank reference-----
 General description of yourself-----

If the above information checks with our records, you will be communicated with by return mail. Use envelope enclosed for your reply.

Very truly yours,

PIONEER INHERITANCE SERVICE.

By

EXHIBIT D

Examiners of Titles ** Searcher of Records ** Genealogists **

Correspondents in All Principal Cities of the World

MISSING HEIRS LOCATED

PIONEER INHERITANCE SERVICE

ESTATE COUNSELLORS

Stuart Building, Lincoln, Nebraska

Refer to File Number

Subject:

We have been asked to communicate with the above subject and our file indicates that you may be able to assist us.

Can you give us the present address or refer us to a friend or relative who may be able to supply this information?

This is a matter of distinct importance to the person in question and an early reply will be appreciated. Please answer the questions below as fully as possible and mail in the envelope enclosed.

Very truly yours,

PIONEER INHERITANCE SERVICE.

By

Full name of above subject-----
 Present residence address-----
 Name of present employer-----
 Present business address-----

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 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, Charles D. Hustead, individually, and trading as Terminal Messenger Service and as Pioneer Inheritance Service, 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 printed forms, form letters and envelopes, or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

1. Using the words "Terminal Messenger Service," or any other word or words of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent operates any messenger service.

2. Representing, directly or by implication, that respondents' business is located in any "terminal" building, or that respondent's business is in any manner connected with the transportation of goods over railroads or other public transportation agencies, or with the delivery of goods so transported, or with the handling or delivery of express shipments or travelers' baggage.

3. Representing, directly or by implication, that persons concerning whom information is sought through respondent's form letters, envelopes, or other material are or may be consignees of goods which have been received by respondent from railroad or other public transportation agencies or that the information sought through such means is for the purpose of enabling respondent to make delivery of any goods or packages to such persons.

4. Using the words "Pioneer Inheritance Service," or any other word or words of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent's business bears any relation to decedents' estates or to the rights or interests of heirs therein.

5. Representing, directly or by implication, that respondent has correspondents in all principal cities of the world.

6. Representing, directly or by implication, that respondent acts as counsellor to those in charge of decedents' estates, or that respondent is engaged in the business of locating missing heirs.

7. Representing, directly or by implication, that respondent examines titles to property.

8. Representing, directly or by implication, that respondent is engaged in genealogical research, or in the searching of records.

9. Representing, directly or by implication, that persons concerning whom information is sought through respondent's form letters or other material have or may have any interest in decedents' estates or any other property.

10. Using, or supplying to others for use, printed forms, form letters, envelopes, or other material which represent, directly or by implication, that respondent's business is other than that of obtaining information for use in the collection of debts, or that the information sought through such means is for any purpose other than for use in the collection of debts.

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
MILTON GOLDENBERG 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 4907. Complaint, Feb. 12, 1943—Decision, Apr. 29, 1943

Where three individuals, engaged in interstate sale and distribution of post cards which were intended for use by creditors and collection agencies in obtaining information concerning debtors, some of which displayed trade name "Golden Distributors," and, captioned "Final Notice," advised the recipient that "We have on hand a prepaid package for the party whose name appears on other side of card. Due to change or error of address and lack of identification we cannot make delivery * * *" and, under "Consignee Must Be Identified," "Fill in all spaces below Or Package will Not Be Delivered," provided for name and address of the addressee and that of his employer and bank—

- Making use of a plan under which they placed code numbers on said cards, identifying the particular customer, purchasers addressed the cards to the persons concerning whom information was sought, stamped them, and returned them to individuals in question for mailing; and said individuals, in turn, sent such cards as were filled out and returned to them, to the customers identified by the aforesaid code numbers, and to each of those who returned a card with information sent a common or ordinary pen point;
- (a) Falsely represented through said cards, and placed in the hands of their customers means of falsely representing, that persons concerning whom information was sought were consignees of prepaid packages of more than trivial value, which were in said individuals' hands in the usual course of their business, and that delivery could not be made by reason of change of, or error in, the address of the consignee and lack of identification; and
 - (b) Represented directly and by implication of trade name "Golden Distributors," that said individuals were in some capacity connected with the transportation and delivery of goods;

The facts being said various representations were false; the packages to which the cards referred were those made up by said individuals containing aforesaid pen points; and the scheme in question was merely an attempt to obtain information by subterfuge; and

Where said individuals, engaged as aforesaid, making use of name "Golden Sales Agency" on similar cards which, similarly planned to secure by subterfuge debtor's name and address and that of his employer, captioned "TO INTRODUCE OUR PENS TO YOU," advised addressee that "We will mail one to you absolutely FREE OF CHARGE AND WITHOUT ANY OBLIGATION ON YOUR PART, provided you show it to your friends and fellow employees where you work. In order to avoid any duplication, name of employer must be given * * *"; and stated "Coupon void if not mailed in 30 days. Not Transferable"; making use of a plan similar to that hereinbefore described—

- (c) Falsely represented and placed in the hands of their customers means of falsely representing, directly and by implication, to persons concerning whom information was sought, that the pens were something other than common or ordinary pen points and were such that the recipients' friends might be

interested in the purchase thereof; and that their proposal was made to introduce such pens to prospective customers; and

(d) Represented through use of the name "Golden Sales Agency," that they were in the business of selling and distributing goods;

The facts being the whole scheme was merely a subterfuge for obtaining information; the pen points concerned were readily obtainable at retail at a penny or two; and the cards in question had no connection with sale and distribution of pens or other goods;

With effect of misleading, and tendency and capacity to mislead and deceive, many persons to whom the cards were sent into the erroneous belief that such representations were true, and of thereby causing such persons to give information which they would not otherwise have supplied:

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

Mr. Randolph W. Branch for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Milton Goldenberg, an individual, also known as Milton Golden, Natalie Goldenberg, an individual, also known as Natalie Golden, and Leonard Goldenberg, an individual, also known as Leonard Golden, 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, Milton Goldenberg, Natalie Goldenberg, and Leonard Goldenberg are individuals, who, prior to about August 15, 1942, maintained an office and principal place of business at 2857 Sedgwick Avenue, city and State of New York. In conducting their business, respondents traded under the names The Golden Skip Tracing Agency, Golden Sales Agency, and Golden Distributors.

PAR. 2. During a period commencing on or about April 1, 1941, and ending on or about August 15, 1942, respondents were engaged in the business of distributing and selling post cards, designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondents caused the said post cards to be transported from their aforesaid place of business in the State of New York to purchasers thereof in various other States of the United States and in the District of Columbia. During the period mentioned above, respondents maintained a course of trade in said post cards in commerce between

Complaint

36 F. T. C.

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

PAR. 3. The said cards sold and distributed by respondents, when using the name "Golden Distributors," were in the form exemplified by a photostatic copy thereof marked "Exhibit A," attached hereto, and by this reference incorporated herein and made a part hereof; when using the name "Golden Sales Agency" the cards were in the form exemplified by a photostatic copy thereof marked "Exhibit B," attached hereto, and by this reference incorporated herein and made a part hereof.

PAR. 4. In the space for "Package Reference No." on the cards exemplified by Exhibit A, when they were delivered to purchasers thereof, respondents placed numbers, which were their code numbers and identified their customers to them, and after the words "Charge" and "Dept." the words "None" and "Unclaimed."

Respondents' purchasers addressed the cards to the persons concerning whom information was sought at their last known addresses, attached the postage necessary for their delivery to such persons, and caused the cards to be delivered to respondents in New York City. Respondents then deposited the individual cards in the United States mail.

Such of the return cards as were filled out and mailed were received by respondents, the customers identified by the code numbers and sent by them to the proper customers.

Respondents sent to each of the persons who returned the cards a common or ordinary pen point.

PAR. 5. By means of the aforesaid cards, respondents have falsely represented, and placed in the hands of their customers means of falsely representing directly and by implication, to persons concerning whom information was sought, that such persons were consignees of packages sent by someone other than respondents and in the hands of respondents in the usual course of their business; that such shipments had involved transportation charges which had been prepaid by the consignors; that the packages were of more than trivial value and that delivery could not be made by reason of change of or error in the address of the consignee and lack of identification.

PAR. 6. Through the use of the name "Golden Distributors" respondents have represented, directly and by implication, that they were in some capacity connected with the movement and transportation of goods and their delivery to the proper consignees.

PAR. 7. The said representations were false and misleading. In truth and in fact respondents' business had, so far as the recipients of said cards were concerned, nothing whatever to do with the movement or transportation of goods or their delivery to the proper consignees.

The persons with respect to whom the said cards were intended to elicit information were not consignees of packages sent by others than respondents and in the hands of respondents. The packages to which the cards referred were those made up by respondents containing the pen points referred to in paragraph 4 hereof. The whole scheme was merely an attempt to obtain information by subterfuge.

PAR. 8. In the space opposite "No." on the cards exemplified by Exhibit B, when they were delivered to purchasers thereof, respondents placed numbers which were their code numbers and identified their customers to them. The cards were used and handled to all intents and purposes as were the "Golden Distributors" cards, as set forth in paragraph 4 hereof.

PAR. 9. By means of the aforesaid cards, respondents falsely represented, and placed in the hands of their customers means of falsely representing, directly and by implication, to persons concerning whom information was sought, that the pens were something other than common or ordinary pen points and were of such a character that the recipients' fellow employees and friends might be interested in the purchase thereof and that respondents' proposal was made in order to introduce them to prospective purchasers.

PAR. 10. Through the use of the name "Golden Sales Agency" respondents represented, directly and by implication, that they were in the business of selling and distributing goods.

PAR. 11. The said representations were false and misleading. In truth and in fact, the pens sent by respondents to those who returned the reply cards were common or ordinary pen points. Such pen points were readily obtainable at retail for a penny or two, were not of such character as to be of any possible interest to the persons to whom they might be exhibited, and were not sent to the recipients of the cards as a method of getting their merits before possible purchasers. The said cards had no connection with the sale and distribution of pens or other goods. The whole scheme was merely a deceit or subterfuge for obtaining information.

PAR. 12. The use, as hereinabove set forth, of the foregoing false and misleading statements and representations has had the tendency and capacity to, and has, misled and deceived many persons to whom the said cards were sent into the erroneous and mistaken belief that said statements and representations were true, and by reason thereof has caused them to give information which they would not otherwise have supplied.

PAR. 13. 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.

Exhibits

36 F. T. C.

EXHIBIT A

Final Notice

●

We have on hand a prepaid package for the party whose name appears on other side of card.

Due to change or error of address and lack of identification we cannot make delivery.

Package will be sent to proper party with No Charges if you will fill in and return the attached reply card.

GOLDEN DISTRIBUTORS

2857 Sedgwick Avenue

New York, N. Y.

No Postage Required on

Attached Reply Card

Please Answer Promptly

Please Mail Promptly

GOLDEN DISTRIBUTORS

New York, N. Y.

Package Reference Number

Dept. Unclaimed.

Checked by _____

Charges. None.

We have on hand a package for

Name _____

Address _____

which we are unable to deliver due to change or error of address and lack of identification.

Consignee Must Be Identified

Fill in all spaces below

Or Package Will Not Be Delivered

Deliver the above package to:

Name _____

Residence _____

City _____

Employer _____

Address _____

Bank _____

Address _____

Package will be sent only to person intended for, at their address, and not in care of anyone else.

No Postage Necessary

612

Exhibits

GOLDEN DISTRIBUTORS

2857 Sedgwick Avenue

New York, N. Y.

Place
1 Cent
Stamp
Here

Postmaster: Please
forward if necessary.

Reply Card

Place
1 Cent
Stamp
Here

GOLDEN DISTRIBUTORS

2857 SEDGWICK AVENUE

NEW YORK, N. Y.

Exhibits

36 F. T. C.

EXHIBIT B**To Introduce Our
Pens to You**

We will mail one to you absolutely Free of Charge and Without any Obligation on Your Part, provided you show it to your friends and fellow employees where you work.

In order to avoid any duplication, name of employer must be given.

You must act promptly, as a limited supply of pens will be distributed in this manner. Yours will be sent to you Parcel Post Prepaid as soon as this card is returned.

Important—Mail Early

Free Coupon

No. _____

This will certify that _____ is entitled to One Pen Absolutely Free of Charge and Without any Obligation, when filled and returned to Golden Sales Agency, N. Y., N. Y.

Name _____

Address _____

City _____

State _____

Employed by _____

Address _____

Coupon void if not mailed in 30 days. Not Transferable.

612

Exhibits

GOLDEN SALES AGENCY
2857 Sedgwick Avenue
New York, N. Y.

Place
1 Cent
Stamp
Here

Postmaster: Please
forward if necessary.

Reply Card

Place
1 Cent
Stamp
Here

GOLDEN SALES AGENCY
2857 SEDGWICK AVENUE
NEW YORK, N. Y.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 12, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Milton Goldenberg, also known as Milton Golden, Natalie Goldenberg, also known as Natalie Golden, and Leonard Goldenberg, also known as Leonard Golden, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Subsequently, the respondents filed their answers to the complaint, in which answers they admitted all of the material allegations of fact 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 answers thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Milton Goldenberg, Natalie Goldenberg, and Leonard Goldenberg, are individuals, who, prior to about August 15, 1942, maintained an office and principal place of business at 2857 Sedgwick Avenue, city and State of New York. In conducting their business, respondents traded under the names The Golden Skip Tracing Agency, Golden Sales Agency, and Golden Distributors.

PAR. 2. During a period commencing on or about April 1, 1941, and ending on or about August 15, 1942, respondents were engaged in the business of distributing and selling post cards designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondents caused these post cards to be transported from their place of business in the State of New York to purchasers thereof in various other States of the United States and in the District of Columbia. During the period mentioned above, respondents maintained a course of trade in their post cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The cards sold and distributed by respondents when using the name "Golden Distributors" were in the form exemplified by a copy thereof marked "Exhibit A," attached hereto and by this reference incorporated herein and made a part hereof. When using the

name "Golden Sales Agency," the cards were in the form exemplified by a copy thereof marked "Exhibit B," attached hereto and by this reference incorporated herein and made a part hereof.

PAR. 4. In the space for "Package Reference No." on the cards exemplified by Exhibit A, when they were delivered to purchasers thereof, respondents placed numbers, which were their code numbers and identified their customers to them; and after the words "Charge" and "Dept.," the words "None" and "Unclaimed."

Respondents' purchasers addressed the cards to the persons concerning whom information was sought, at their last known addresses; attached the postage necessary for their delivery to such persons, and caused the cards to be delivered to respondents in New York City. Respondents then deposited the individual cards in the United States mail.

Such of the return cards as were filled out and mailed were received by respondents, the customers identified by the code numbers, and the cards sent by them to the proper customers.

Respondents sent to each of the persons who returned the cards a common or ordinary pen point.

PAR. 5. By means of the aforesaid cards, respondents have falsely represented, and placed in the hands of their customers means of falsely representing, directly and by implication, to persons concerning whom information was sought that such persons were consignees of packages sent by someone other than respondents and in the hands of respondents in the usual course of their business; that such shipments had involved transportation charges which had been prepaid by the consignors; that the packages were of more than trivial value; and that delivery could not be made by reason of change of or error in the address of the consignee and lack of identification.

PAR. 6. Through the use of the name "Golden Distributors," respondents have represented, directly and by implication, that they were in some capacity connected with the movement and transportation of goods and their delivery to the proper consignees.

PAR. 7. These representations were false and misleading. In truth and in fact, respondents' business had, so far as the recipients of such cards were concerned, nothing whatever to do with the movement or transportation of goods or their delivery to the proper consignees. The persons with respect to whom the cards were intended to elicit information were not consignees of packages sent by others than respondents and in the hands of respondents. The packages to which the cards referred were those made up by respondents containing the

pen points referred to in paragraph 4 hereof. The whole scheme was merely an attempt to obtain information by subterfuge.

PAR. 8. In the space opposite "No." on the cards exemplified by Exhibit B, when they were delivered to purchasers thereof, respondents placed numbers which were their code numbers and identified their customers to them. The cards were used and handled, to all intents and purposes, as were the "Golden Distributors" cards, as set forth in paragraph 4 hereof.

PAR. 9. By means of the aforesaid cards, respondents falsely represented, and placed in the hands of their customers means of falsely representing, directly and by implication, to persons concerning whom information was sought that the pens were something other than common or ordinary pen points and were of such a character that the recipients' fellow employees and friends might be interested in the purchase thereof, and that respondents' proposal was made in order to introduce them to prospective purchasers.

PAR. 10. Through the use of the name "Golden Sales Agency," respondents represented, directly and by implication, that they were in the business of selling and distributing goods.

PAR. 11. These representations were false and misleading. In truth and in fact, the pens sent by respondents to those who returned the reply cards were common or ordinary pen points. Such pen points were readily obtainable at retail for a penny or two, were not of such a character as to be of any possible interest to the persons to whom they might be exhibited, and were not sent to the recipients of the cards as a method of getting their merits before possible purchasers. Such cards had no connection with the sale and distribution of pens or other goods. The whole scheme was merely a deceit or subterfuge for obtaining information.

PAR. 12. The use, as hereinabove set forth, of the foregoing false and misleading statements and representations has had the tendency and capacity to, and has, misled and deceived many persons to whom the cards were sent into the erroneous and mistaken belief that such statements and representations were true, and by reason thereof has caused such persons to give information which they would not otherwise have supplied.

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.

612

Exhibits

EXHIBIT A

Card addressed to person from whom information was sought:

Final Notice

We have on hand a prepaid package for the party whose name appears on other side of card.

Due to change or error of address and lack of identification we cannot make delivery.

Package will be sent to proper party with No Charges if you will fill in and return the attached reply card.

GOLDEN DISTRIBUTORS

2857 Sedgwick Avenue

New York, N. Y.

No Postage Required on

Attached Reply Card

Please Answer Promptly

Reply card to be filled out and returned by such person:

Please Mail Promptly

GOLDEN DISTRIBUTORS

New York, N. Y.

Dept. UNCLAIMED.

Package Reference
Number
5819

Checked by _____

Charges. NONE.

We have on hand a package for
Name _____

Address _____

which we are unable to deliver due to change or error of address and lack of
identification.

Consignee Must Be Identified

Fill in all spaces below

Or Package will Not Be Delivered

Deliver the above package to:

Name _____

Residence _____

City _____

Employer _____

Address _____

Bank _____

Address _____

Package will be sent only to person intended for, at their address, and not in care
of anyone else.

No Postage Necessary

Order

36 F. T. C.

EXHIBIT B

Card addressed to person from whom information was sought:

To Introduce Our
Pens to You

We will mail one to you absolutely Free of Charge and Without Any Obligation on Your Part, provided you show it to your friends and fellow employees where you work.

In order to avoid any duplication, name of employer must be given.

You must act promptly, as a limited supply of pens will be distributed in this manner. Yours will be sent to you Parcel Post Prepaid as soon as this card is returned.

Reply card to be filled out and returned by such person:

Important—Mail Early	FREE Coupon		No. _____
	This will certify that _____ is entitled to One Pen Absolutely Free of Charge and Without Any Obligation, when filled and returned to Golden Sales Agency, N. Y., N. Y.		
	_____		_____
	Name	Address	
	_____		_____
	City	State	
	_____		_____
	Employed by	Address	
Coupon void if not mailed in 30 days. Not transferable.			

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, in which answers respondents admit all of the material allegations of fact in the complaint and waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Milton Goldenberg, also known as Milton Golden, Natalie Goldenberg, also known as Natalie Golden, and Leonard Goldenberg, also known as Leonard Golden, individually,

and trading as Golden Distributors and as Golden Sales Agency, 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' post cards or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

1. Using the words "Golden Distributors," or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are connected in any capacity with the movement or transportation of goods or shipments, or with the delivery of goods or shipments to the consignees thereof.

2. Representing, directly or by implication, that persons concerning whom information is sought through respondents' post cards or other material are or may be consignees of goods or packages in the hands of respondents, or that the information sought through such means is for the purpose of enabling respondents to make delivery of goods or packages to such persons.

3. Using the words "Golden Sales Agency," or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are engaged in the business of selling or distributing goods or merchandise.

4. Using, or supplying to others for use, post cards or other material which represent, directly or by implication, that they are for the purpose of introducing respondents' pens or any other merchandise to the public.

5. Using, or supplying to others for use, post cards or other material which represent, directly or by implication, that respondents' business is other than that of obtaining information for use in the collection of debts, or that the information sought through such post cards or other material is for any purpose other than for use in the collection of debts.

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

MILTON IRWIN, DR. WALTER G. BERG, AND DR. DAVID
W. MILLS, TRADING AS ASSOCIATED LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4722. Complaint, Mar. 6, 1942—Decision, Apr. 30, 1943*

Where three individuals, engaged in the manufacture and interstate sale and distribution of their "Gordon Detoxifier" which (1) was designed for cleansing the intestines, converting ordinary hydrant water into a temperature and pressure that might be safely introduced into the body; (2) included provisions for the mixing of air with water and the addition of ozone if desired; and (3) included arrangements by which the waste matter might be observed and specimens subjected to detailed examination; selling such device usually only to chiropractors and osteopaths, though directing part of their advertising to the public to cause it to visit chiropractor purchasers for treatment, and also supplying purchasers with advertising for distribution to the public; by means of advertisements in periodicals, booklets, pamphlets, circulars, and other advertising material, directly and by implication—

- (a) Represented that their device would thoroughly and harmlessly cleanse both the large and small intestines and massage and strengthen their tissues; that the injection of oxygen into the intestinal tract by means of such device would destroy the anaerobic germs; and that it would purify the blood stream, reduce high blood pressure, and reveal to the patient which foods should be avoided in order to insure maximum efficiency in digestion;
- (b) Represented that the device served to lessen the burden borne by the liver and kidneys; relieved sinus and antrum complications; that its use resulted in the reestablishment of a normal peristalsis or natural muscular activity of the intestines and assisted in preventing hardening of the arteries; that most ailments originate in the small intestines; and that the introduction of ozone into the body by means of said device accelerated the healing process and stimulated recovery; and
- (c) Represented that constipation, headache, and a large number of other specified ailments and conditions, including appendicitis, asthma, excessive fatigue, high and low blood pressure, kidney, bladder and liver complications, lumbago, nervousness, rheumatism, sinus trouble, and ulcers of the stomach and bowels were almost invariably caused by intestinal toxemia, and that their device constituted an effective treatment therefor;

The facts being that their device, notwithstanding certain refinements and conveniences, had no therapeutic value in excess of that possessed by the ordinary enema; neither their device nor any enema, by reason of the body physiology, is capable of cleansing the small intestine; and forced regurgitation from the large to the small bowel, if possible, would be inadvisable because of the dangerous potentialities; injection of oxygen would not ordinarily destroy the anaerobic germs, which, in any event, it is not always desirable to do; introduction of ozone—having no therapeutic value under such conditions and possibly irritating—would not accelerate healing or

Complaint

stimulate recovery; statements that most ailments originate in the small intestine, and that appendicitis and the numerous other ailments specified were almost invariably caused by intestinal toxemia, were erroneous and misleading, being essentially based upon the now generally rejected theory of auto-intoxication; and their device did not constitute an effective treatment for any of the conditions set forth, excepting constipation and headaches due thereto, in which temporary relief might be obtained through its use; and it would not, in other respects, accomplish results claimed; and

- (d) Falsely implied, through use of incorrect and misleading term "hydro-surgery," unknown in medical science, in describing their device and the results obtained through use thereof, that said results were similar to those accomplished by surgery; and
- (e) Falsely represented or implied, through use of word "Detoxifier" to designate their said device, that it would rid the body of toxins which it was incapable of doing;

With tendency and capacity to mislead and deceive a substantial number of the public into the mistaken belief that said device possessed therapeutic properties which it did not, thereby causing such members of the public to undergo treatment therewith:

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. R. P. Bellinger, for the Commission.

Mr. Frank A. Whiteley, of Minneapolis, Minn., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Milton Irwin, Dr. Walter G. Berg, and Dr. David W. Miles, individuals, trading as Associated Laboratories, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Milton Irwin, Dr. Walter G. Berg and Dr. David W. Miles, individuals, trading as Associated Laboratories, have their principal place of business located at 4609 Nicollet Avenue, Minneapolis, Minn. The individual addresses of each of the three respondents are respectively as follows: Milton Irwin, 4609 Nicollet Avenue S., Minneapolis, Minn.; Dr. Walter G. Berg, 330 Kresge Building, Minneapolis, Minn.; Dr. David W. Miles, 2044 Richmond Avenue, Houston, Tex.

PAR. 2. The respondents are now and for several years last past have been engaged in the manufacture, sale and distribution of a device

Complaint

36 F. T. C.

designated as Gordon Detoxifier, a rectal irrigator designed for cleansing the bowels and intestines.

In the course and conduct of their said business respondents cause said device, when sold, to be transported from their place of business in the State of Minnesota to purchasers thereof located in various other States of the United States and in the District of Columbia.

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 device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said device; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

This natural and drugless therapy performs as follows:

Cleanses both large and small bowel, thoroughly and in a harmless manner.

Massages the bowel and gives necessary tone to tissues involved.

Its employment of oxygen destroys the anaerobic germs, which can not live in this medium.

Purifies the blood stream; proved by microscopic examination after treatments.

Relieves rheumatic, arthritic and neuritic pain, often in one treatment.

Reduces hypertension or high blood pressure, thus easing the work of the heart and freeing the walls of its cells, and the brain, from undue strain.

Indicates to patients what foods to avoid, to insure maximum efficiency in digestion.

Lessens the burden thrown on the liver and kidneys.

Improves sinus—and untrum complications in a few treatments.

Re-establishes a normal peristalsis, or natural muscular activity of the intestines.

Assists in preventing the hardening of the arteries by minimizing the deposits of calcium and magnesium salts on the walls.

A pulsating stream of water and air bubbles is introduced into the bowels in a scientifically controlled manner. This pulsating stream penetrates readily into the SMALL intestine, hitherto inaccessible to any other method of treatment. Most ailments are found to originate in the small intestine.

Ozone is especially beneficial in cases of ulcers, colitis, bowel inflammation and toxemia.

Ozone destroys bacteria on contact yet it is not a drug and is nontoxic and nonirritating. It promotes healing and stimulates recovery.

Specializing in Cases of Intestinal Toxemia

The Cause of Most Human Illness

* * *

The following symptoms and ailments are almost invariably caused by Intestinal Toxemia. They can now be successfully treated.

Appendicitis	Lumbago
Arthritis	Menopause Disturbances
Asthma	Muddy or Pimply Complexion
Colitis	Migrain
Constipation	Nervousness
Excessive Fatigue	Pruritus Ani
Foul Breath	Rheumatism
Headache	Sinus Trouble
Gall Bladder Complications	Run Down Condition
High and Low Blood Pressure	Short of Breath
Indigestion	Sleeplessness
Irregular Heart	Ulcers of Stomach and Bowels
Kidney and Bladder Complications	Ulcerative Colitis
Liver Complications	

PAR. 4. By the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent directly and by implication that the use of the device, designated as "Gordon's Detoxifier" will thoroughly and harmlessly cleanse both the large and the small intestine; that its use will massage and strengthen both the large and small intestine and strengthen the tissues of the intestinal tract; that the injection of oxygen into the intestinal tract by said device will destroy the anaerobic germ; that its use will purify the blood stream; that its use, often in one treatment, will relieve the pain of rheumatism, arthritis, and of neuritis; that its use will reduce hypertension or high blood pressure with resulting relief of strain on the heart and on the brain; that its use will reveal to the patient himself, what foods to avoid in order to insure maximum efficiency in digestion; that its use will result in lessening the burden thrown on the liver and kidneys; that its use, in a few treatments, will relieve sinus and antrum complications; that its use will result in the reestablishing of a normal peristalsis or the natural muscular activity of the intestines; that its use will assist by minimizing deposits of calcium and magnesium salts on the walls of the arteries, in preventing their hardening; that said device will

Complaint

36 F. T. C.

send, in a scientifically controlled manner, a pulsating stream of water and air bubbles into the bowels and into the otherwise inaccessible small intestine; that most ailments originate in the small intestine; that the use of ozone in said device accelerates the healing process and stimulates recovery; and that ailments and conditions such as appendicitis, arthritis, asthma, colitis, constipation, excessive fatigue, foul breath, headache, gall-bladder complications, high and low blood pressure, indigestion, irregular heart, kidney and bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritus ani, rheumatism, sinus trouble, rundown condition, shortness of breath, sleeplessness, ulcers of the stomach and bowels, and ulcerated colitis, are almost invariably caused by intestinal toxemia or toxins in the intestinal tract, and that such diseases or conditions can be successfully treated by respondents' said device.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondents as hereinabove described are grossly exaggerated, false, and misleading.

In truth and in fact, the use of respondents' said "Gordon's Detoxifier" will not thoroughly and harmlessly cleanse both the large and small intestines. In fact, the frequent and repetitious use of said device may seriously interfere with the normal functioning of the lower bowels and may produce distinct harm by the removal of the normal protective mucous which should always be present on the surface of the mucosa of the lower bowels, thereby producing irritation. The use of said device will not massage and strengthen both the large and small intestines or any part of the intestinal tract. The injection by said device of oxygen into the intestinal tract will not destroy the anaerobic germ. The use of said device will not purify the blood stream and it will not relieve the pain caused by rheumatism, arthritis, and neuritis. The use of said device will not reduce hypertension or high blood pressure and will have no effect on relieving strain on the heart or the brain. The use of said device will not reveal to the patient what foods to avoid in order to insure maximum efficiency in digestion. Its use will not lessen the burden thrown on the liver or the kidneys. Its use will not, in either a few treatments or in many treatments, relieve sinus and antrum complications. Its use will not result in the reestablishing of a normal peristalsis or the natural muscular activity of the intestine. Its use will not in any manner prevent the hardening of the arteries. Said device will not send a pulsating stream of water and air bubbles, in a scientifically controlled manner, into the small intestine. Furthermore, if water from said device should enter the small intestine

the result of such penetration would not have a favorable effect on any disease or condition of the body, but might result in harmful or serious consequences. Most ailments do not originate in the small intestines. The use of ozone in said device will not accelerate the healing process and stimulate recovery, and if a significant amount of ozone is injected into the intestinal tract, serious injury to health may follow. The ailments and conditions such as appendicitis, arthritis, asthma, colitis, constipation, excessive fatigue, foul breath, headache, gall-bladder complications, high and low blood pressure, indigestion, irregular heart, kidney and bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritus ani, rheumatism, sinus trouble, rundown condition, shortness of breath, sleeplessness, ulcers of the stomach and bowels, and ulcerated colitis, are not almost invariably caused by intestinal toxemia or by the presence of toxins in the intestinal tract and such diseases or conditions cannot be successfully treated by the use of respondents' said device. Furthermore, the effect of said device is limited to an injection of liquid into the lower intestinal tract and its therapeutic value is correspondingly limited to that of an ordinary enema.

PAR. 6. Respondents' use of the term "hydro-surgery" in describing said device or the effects thereof in the treatment of diseases or conditions of the human body, is false and misleading in that said term falsely indicates that the use of said device accomplishes results similar to results accomplished by surgery.

Furthermore, respondents' use of the name "Gordon's Detoxifier" is false and misleading in that the use of the word "detoxifier" falsely indicates that respondents' said device will remove or destroy toxins in the human system.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and advertisements with respect to their said device 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 such statements, representations, and advertisements are true, and induces a number of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said device, and also because of said mistaken belief induces a substantial number of the public, to patronize persons owning or operating said device.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 6, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Milton Irwin, Dr. Walter G. Berg, and Dr. David W. Miles, individuals, trading as Associated Laboratories, 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 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, Milton Irwin, Dr. Walter G. Berg, and Dr. David W. Miles, are individuals, trading as Associated Laboratories, with their principal office and place of business located at 4609 Nicollet Avenue, Minneapolis, Minn. The individual mailing addresses of the respondents are as follows: Milton Irwin, 4609 Nicollet Avenue, Minneapolis, Minn.; Dr. Walter G. Berg, 330 Kresge Building, Minneapolis, Minn.; Dr. David W. Miles, 2044 Richmond Avenue, Houston, Tex.

Respondents are now, and for a number of years last past have been engaged in the manufacture, sale, and distribution of a medicinal device designated by them as the "Gordon Detoxifier" and designed for cleansing the intestines.

PAR. 2. Respondents cause and have caused their device, when sold, to be transported from their principal place of business in the State of Minnesota, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their device in com-

merce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their device, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in such advertisements disseminated and caused to be disseminated, as set forth above, by insertion in periodicals and by booklets, pamphlets, circulars, letters, and other advertising material, are the following:

This natural and drugless therapy performs as follows:

1. Cleanses both large and small bowel, thoroughly and in a harmless manner.
2. Massages the bowel and gives necessary tone to tissues involved.
3. Its employment of oxygen destroys the anaerobic germs, which can not live in this medium.
4. Purifies the blood stream; proved by microscopic examination after treatments.

* * *

6. Reduces hypertension or high blood pressure, thus easing the work of the heart and freeing the walls of its cells, and the brain, from undue strain.
7. Indicates to patients what foods to avoid, to insure maximum efficiency in digestion.
8. Lessens the burden thrown on the liver and kidneys.
9. Improves sinus—and antrum complications in a few treatments.
10. Reestablishes a normal peristalsis, or natural muscular activity of the intestines.

* * *

12. Assists in preventing the hardening of the arteries, by minimizing the deposits of calcium and magnesium salts on the walls (Com. Ex. No. 8).

A pulsating stream of water and air bubbles is introduced into the bowels in a scientifically controlled manner. This pulsating stream penetrates readily into the SMALL intestine, hitherto inaccessible to any other method of treatment. Most ailments are found to originate in the small intestine (Com. Ex. No. 8).

Ozone is especially beneficial in cases of ulcers, colitis, bowel inflammation and toxemia.

Ozone destroys bacteria on contact yet it is not a drug and is non-toxic and non-irritating. It promotes healing and stimulates (Com. Ex. No. 3).

Findings

36 F. T. C.

Specializing in Cases of Intestinal Toxemia
The Cause of Most Human Illness

The following symptoms and ailments are almost invariably caused by Intestinal Toxemia. They can now be successfully treated.

Appendicitis	Lumbago
* * *	Menopause Disturbances
Asthma	Muddy or Pimply Complexion
Colitis	Migrain
Constipation	Nervousness
Excess Fatigue	Pruritus Ani
Foul Breath	Rheumatism
Headache	Sinus Trouble
Gall Bladder Complications	Run Down Condition
High and Low Blood Pressure	Short of Breath
Indigestion	Sleeplessness
Irregular Heart	Ulcers of Stomach and Bowels
Kidney and Bladder Complications	Ulcerative Colitis (Com. Ex. No. 10).
Liver Complications	

PAR. 4. Through the use of these statements and representations and others of a similar nature, respondents have represented, directly or by implication, that their device will thoroughly and harmlessly cleanse both the large and small intestines; that it will massage and strengthen both large and small intestines and strengthen the tissues of the intestinal tract; that the injection of oxygen into the intestinal tract by means of such device will destroy the anaerobic germs; that the device will purify the blood stream; that it reduces high blood pressure; that it reveals to the patient which foods should be avoided in order to insure maximum efficiency in digestion; that it serves to lessen the burden borne by the liver and kidneys; that it relieves sinus and antrum complications; that its use results in the reestablishing of a normal peristalsis or natural muscular activity of the intestines; that it assists in preventing hardening of the arteries; that most ailments originate in the small intestine; that the introduction of ozone into the body by means of respondent's device accelerates the healing process and stimulates recovery; that appendicitis, asthma, colitis, constipation, excessive fatigue, foul breath, headache, gall-bladder complications, high and low blood pressure, indigestion, irregular heart, kidney and bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migrain, nervousness, pruritus ani, rheumatism, sinus trouble, run-down condition, shortness of breath, sleeplessness, ulcers of the stomach and bowels, and ulcerative colitis are almost invariably caused by intestinal toxemia; and that respondents' device constitutes an effective treatment for such conditions.

PAR. 5. Respondents' product may be defined as an intestinal irrigator, being designed to introduce water into the intestines via the rectum. When installed the device connects with the city-water supply, and its purpose is to convert ordinary hydrant water into such a condition of temperature and pressure that such water may safely be introduced into the human body. Provision is made for the mixing of air with the water, and also for the use of ozone in the water if desired. The mechanism also includes an "out-flow" arrangement whereby the waste matter of excrement from the bowels is removed and made to flow into the sewer. Before leaving the apparatus the waste matter is caused to pass through glass tubes and may be observed by the patient and the operator of the machine. Specimens of the excrement may, if desired, be removed from the tubes and subjected to more detailed examination.

While a small number (possibly 5) of the machines have been sold by respondents to medical doctors, they are usually sold only to chiropractors and osteopaths. They are not ordinarily sold to the lay public, although part of respondents' advertising is directed to the public for the purpose of causing the public to visit chiropractors who have purchased the machine and undergo treatment. Respondents also supply to purchasers of their machine advertising to be distributed by such purchasers to the public.

PAR. 6. The expert testimony in the record discloses that respondents' device possesses no therapeutic value in excess of that possessed by the ordinary enema. While the device has certain refinements and conveniences, such as the more efficient regulation of the temperature and pressure of the water and the facilities for disposing of the excrement from the bowels, these features add nothing to the therapeutic value of the device. Neither respondents' device nor any enema is capable of cleansing the small intestine. The principal reason for this is that the ileo-cecal valve at the junction of the large and small intestines permits the passage of food, water, or other substances in only one direction, that is, from the small intestine into the large intestine. Except in isolated and unusual cases, matter is not regurgitated or thrown back from the large bowel into the small bowel. While it may be possible, through the exertion of strong pressure, to cause regurgitation from the large to the small bowel, this is inadvisable and possesses dangerous potentialities in that such process would result in the abnormal dilation of the intestines, possibly with serious consequences.

The use of respondents' device does not result in the massaging or strengthening of the intestines, nor in the strengthening of the

tissues of the intestinal tract. The injection of oxygen into the intestinal tract by means of the device will not ordinarily destroy the anaerobic germs, and, in fact, it is not always desirable to destroy the anaerobic germs, as they perform useful functions in the body. Respondents' device is incapable of purifying the blood stream or reducing high blood pressure. It is likewise incapable of revealing to the patient which foods should be avoided in order to insure maximum efficiency in digestion. It does not serve to lessen the burden upon the liver and kidneys. The device has no effect upon sinus or antrum complications. It is impossible through the use of the device to bring about a normal peristalsis, that is, the natural muscular activity of the intestines. The device is of no assistance in preventing hardening of the arteries. The introduction of ozone into the body by means of respondents' device does not result in any acceleration of the healing process or the stimulation of recovery, as ozone is without therapeutic value under such conditions of use and may be irritating.

Respondents' statements that most ailments originate in the small intestine, and that appendicitis, asthma, colitis, constipation, excessive fatigue, foul breath, headache, gall-bladder complications, high and low blood pressure, indigestion, irregular heart, kidney and bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritus ani, rheumatism, sinus trouble, run-down condition, shortness of breath, sleeplessness, ulcers of the stomach and bowels, and ulcerative colitis are almost invariably caused by intestinal toxemia, are erroneous and misleading. Essentially these statements are based upon the theory of auto-intoxication, which is now rejected by the consensus of medical and scientific opinion. Respondents' device does not constitute an effective treatment for any of these conditions except in the case of constipation, where it serves temporarily to irrigate or flush the lower bowel. Also, in those instances where headaches are due to constipation, temporary relief may be obtained through the use of the device.

PAR. 7. The Commission therefore finds that the statements and representations made by respondents with respect to their device, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 8. In their advertisements respondents have also made use of the term "hydro-surgery" in describing their device and the results obtained through the use of the device. The evidence shows that this term is unknown in medical science and that it is incorrect and misleading, as implying that the results obtained through the use of the device are similar to those accomplished by surgery, when such is not the fact.

The Commission is of the further opinion and finds that the word "Detoxifier," used by respondents in their advertisements to designate or describe their device, is likewise erroneous and misleading in that the term represents or implies that the device will rid the body of toxins. The device is in fact incapable of effecting such result.

PAR. 9. The use by respondents of the false advertisements herein referred to, including the use of the terms "hydro-surgery" and "Detoxifier," has the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that respondents' device possesses therapeutic properties which it does not in fact possess, and the tendency and capacity to cause such members of the public to undergo treatment with the device as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of 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 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, Milton Irwin, Dr. Walter G. Berg, and Dr. David W. Miles, individually, and trading as Associated 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, or distribution of respondents' device designated "Gordon Detoxifier," 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 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) uses the term "hydro-surgery," or any other term which includes the word "surgery," to describe respondents' device or the results obtained through the use of said device, or which otherwise represents or implies that the results obtained through the use of said device are comparable with those accomplished by surgery;

(b) uses the word "Detoxifier," or any other word of similar import, to designate or describe respondents' device, or which otherwise represents or implies that said device will rid the body of toxins;

or which advertisement represents, directly or by implication,

(c) that respondents' device will cleanse the small intestine;

(d) that said device will massage or strengthen the large or small intestine, or strengthen the tissues of the intestinal tract;

(e) that the injection of oxygen into the intestinal tract by means of said device will destroy the anaerobic germs;

(f) that said device will purify the blood stream;

(g) that said device reduces high blood pressure;

(h) that said device reveals to the patient which foods should be avoided in order to insure maximum efficiency in digestion;

(i) that said device serves to lessen the burden upon the liver or kidneys;

(j) that said device relieves sinus or antrum complications;

(k) that the use of said device results in the reestablishing of a normal peristalsis or natural muscular activity of the intestines;

(l) that said device assists in preventing hardening of the arteries;

(m) that most ailments originate in the small intestine;

(n) that the introduction of ozone into the body by means of said device accelerates the healing process or stimulates recovery;

(o) that appendicitis, asthma, colitis, constipation, excessive fatigue, foul breath, headache, gall-bladder complications, high or low blood pressure, indigestion, irregular heart, kidney or bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritus ani, rheumatism, sinus trouble, run-down condition, shortness of breath, sleeplessness, ulcers of the stomach or bowels, or ulcerative colitis are almost invariably caused by intestinal toxemia;

(p) that said device constitutes an effective treatment for appendicitis, asthma, colitis, excessive fatigue, foul breath, gall-bladder complications, high or low blood pressure, indigestion, irregular heart, kidney or bladder complications, liver complications, lumbago, menopause disturbances, muddy or pimply complexion, migraine, nervousness, pruritus ani, rheumatism, sinus trouble, run-down condition,

shortness of breath, sleeplessness, ulcers of the stomach or bowels, or ulcerative colitis;

(q) that said device constitutes an effective treatment for constipation, except insofar as it may afford temporary relief by the irrigation or flushing of the lower bowel;

(r) that said device constitutes an effective treatment for headache, except insofar as it may afford temporary relief in those cases where such condition is due to constipation; or

(s) that said device possesses any therapeutic value in excess of that possessed by the ordinary enema.

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' device, which advertisement contains any representation prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

SAMUEL H. MOSS, INC.

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

Docket 4405. Complaint, Dec. 6, 1940—Decision, May 1, 1943

Where a corporation, engaged in competitive interstate sale and distribution of made-to-order straight-line rubber stamps, sold by it to a large extent directly to the consuming public—

- (a) Discriminated in price through selling some customers rubber stamps 3 inches or less in length and $\frac{3}{8}$ -inch or less in height at 4 cents per line, while charging other customers for the same type of products 5 cents, 7 cents, 8 cents, 15 cents, 20 cents, or 30 cents per line, plus in each instance an additional sum for each additional line or fraction thereof; and
- (b) Discriminated in price through selling at approximately the same time rubber stamps of like grade and quality at price of 4 cents, 5 cents, and 15 cents per line 2 inches or less in length and $\frac{3}{8}$ -inch or less in height, plus an additional sum for each added line or fraction;

With result that said lower prices had a substantially injurious effect upon competition in products in question; competitors in some instances could not meet such unjustified lower prices and one competitor was forced out of business; and with tendency and capacity to induce purchase of its said products and to divert trade to it from its competitors:

Held, That effect of price differences concerned might be substantially to lessen, destroy, or prevent competition in sale and distribution of rubber stamps; and that said acts and practices constituted discriminations in price between different purchasers of said products of like grade and quality, resulted in substantial injury to its competitors, hindered and obstructed competition with it and created a monopoly in it in sale and distribution of said products in commerce, and constituted violation of subsection (a) of section 2 of the Clayton Act as amended.

Before *Mr. Lewis C. Russell* and *Mr. Andrew Duvall*, trial examiners.

Mr. John T. Haslett for the Commission.

Brookhart & Sawyer, of Washington, D. C., and *Lewis, Marks & Kanter*, of Brooklyn, N. Y., 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 been and is now violating the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Samuel H. Moss, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 36 East Twenty-third Street, New York, N. Y.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling, and distributing made to order straight-line stamps, hereinafter referred to as rubber stamps. Such commodities processed and manufactured by the respondent are sold direct to the consuming public. Some customers of the respondent purchasing such products are located in States other than the State in which respondent's business is located and some customers, although located within the State in which the respondent's business is located, direct the shipment of their purchases be made by the respondent to their branch offices located in States other than the State in which the respondent's business is located, and in such cases respondent causes such products to be shipped and transported across State lines from respondent's place of business to such customers or to such branch offices of such customers. There is and has been at all times mentioned a continuous course of trade and commerce in said products between respondent's factory and the purchasers of said products, some of which are located in States other than the State in which respondent's business is located, as aforesaid. Said products are sold and distributed for use within the various States of the United States.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, respondent is now and during the time herein mentioned has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of processing, manufacturing, offering for sale, selling, and distributing rubber stamps.

PAR. 4. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is now discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers.

Among the general practices pursued by the respondent in discriminating in price it is alleged that:

1. To some customers the respondent has sold rubber stamps 3 inches or less in length and $\frac{3}{8}$ -inch or less in height at 4 cents per line, plus 4 cents for each additional line or any fraction thereof, while to other customers purchasing the same type of rubber stamp of like grade and quality, the respondent has charged for each product varying prices

Findings

36 F. T. C.

of 5 cents, 7 cents, 8 cents, 15 cents, 20 cents, or 30 cents per line 3 inches or less in length and $\frac{3}{8}$ -inch or less in height plus in each instance an additional sum for each additional line or any fraction thereof.

2. The respondent has sold at approximately the same time rubber stamps of like grade and quality at varying prices of 4 cents, 5 cents, and 15 cents per line 2 inches or less in length and $\frac{3}{8}$ -inch or less in height plus in each instance an additional sum for each additional line or any fraction thereof.

PAR. 5. The effect of the discriminations in price set forth in paragraph 4 hereof has been and may be substantially to lessen competition and to injure, destroy, and prevent competition between respondent and its competitors in the sale and distribution of rubber stamps in interstate commerce and has been and may be to tend to create a monopoly in respondent in said line of commerce.

PAR. 6. The foregoing acts and practices of said respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission on December 6, 1940, issued and subsequently served its complaint upon the respondent, Samuel H. Moss, Inc., a corporation, charging it with violating the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman 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, including a stipulation entered into between W. T. Kelley, chief counsel for the Federal Trade Commission, and the respondent, whereby it was stipulated and agreed that a statement of facts set out therein may be made a part of the record, subject to the approval of the Federal Trade Commission. 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, including stipulation entered into be-

tween W. T. Kelley, chief counsel, and the respondent herein, said stipulation having been approved, accepted, and filed; report of the trial examiners upon the evidence; and briefs filed in support of the complaint and in opposition thereto (oral argument having been requested by the respondent and subsequently canceled), and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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, Samuel H. Moss, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 36 East Twenty-third Street, New York, N. Y.

PAR. 2. Respondent is now, and since June 19, 1936, has been, engaged in the business of processing, manufacturing, offering for sale, selling, and distributing made-to-order straight-line rubber stamps, hereinafter referred to as "rubber stamps." The rubber stamps manufactured and processed by the respondent are, to a large extent, sold direct to the consuming public. Some of the customers of the respondent who purchase rubber stamps from the respondent are located in the State of New York, and other customers are located in States other than the State of New York, in which respondent's business is located; and some of said customers, although located within the State within which respondent's business is located, direct that shipments of their purchases be made by respondent to their branch offices located in States other than the State in which respondent's business is located, and, in such cases, respondent causes and has caused such rubber stamps to be shipped and transported across State lines from respondent's place of business to customers or to such branch offices of such customers. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rubber stamps in commerce between respondent's factory and the purchasers of said products, some of which are located in States other than the State in which respondent's business is located. Said products are sold and distributed for use within the various States of the United States.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, respondent is now, and since June 19, 1936, has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of rubber stamps in commerce among and between the various States of the United States.

PAR. 4. Since June 19, 1936, while engaged in commerce as aforesaid, the respondent in the course of such commerce has discriminated in price, and is now discriminating in price, between different purchasers buying such products of like grade and quality for use within the United States by selling its products of the same grade and quality to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers. Among the general practices pursued by the respondent in discriminating in price are the following:

1. Respondent has sold to some of its customers rubber stamps 3 inches or less in length and $\frac{3}{8}$ -inch or less in height at 4 cents per line, plus 4 cents for each additional line or any fraction thereof, while at the same time respondent has charged other customers purchasing the same type of rubber stamps of like grade and quality varying prices of 5 cents, 7 cents, 8 cents, 15 cents, 20 cents, or 30 cents per line of 3 inches or less in length and $\frac{3}{8}$ -inch or less in height, plus, in each instance, an additional sum for each additional line or fraction thereof.

2. Respondent has sold at approximately the same time rubber stamps of like grade and quality at varying prices of 4 cents, 5 cents, and 15 cents per line 2 inches or less in length and $\frac{3}{8}$ inch or less in height, plus, in each instance, an additional sum for each additional line or fraction thereof.

PAR. 5. Among and typical of the sales at different prices made by the respondent since June 19, 1936, are the following:

1. From October 1939 and subsequent thereto the respondent sold its made-to-order stamps to the American Airlines, Inc., of New York, N. Y., and Chicago, Ill., at 8 cents for a one-line rubber stamp 2 inches in length and $\frac{3}{8}$ of an inch in height, and 8 cents for each additional line thereafter; and 13 cents for a one-line rubber stamp 3 inches in length and $\frac{3}{8}$ of an inch in height, and 13 cents for each additional line thereafter; and 18 cents for a one-line rubber stamp 4 inches in length and $\frac{3}{8}$ of an inch in height, and 18 cents for each additional line thereafter; and 25 cents for a one-line rubber stamp 5 inches in length and $\frac{3}{8}$ of an inch in height, and 25 cents for a one-line rubber stamp 6 inches in length and $\frac{3}{8}$ of an inch in height, and 28 cents for each additional line thereafter; and 33 cents for a one-line rubber stamp 7 inches in length and $\frac{3}{8}$ of an inch in height, and 33 cents for each additional line thereafter. At the same time, respondent was selling made-to-order stamps of the same grade, quality, and size to other of its customers at higher prices than those charged by the respondent to American Airlines, Inc. The main office, including the

purchasing department, of the American Airlines, Inc., in October 1939 and prior thereto was located in Chicago, Ill. Prior to purchasing the above-described rubber stamps from the respondent, the American Airlines, Inc., purchased its supplies of rubber stamps from Martin & Company, 227 West Madison Street, Chicago, Ill., a competitor of the respondent. The prices at which respondent offered for sale and sold its rubber stamps to the American Airlines, Inc., were substantially lower than the prices previously charged and quoted by Martin & Co., and constituted the inducement to the American Airlines, Inc., to purchase its supply of rubber stamps from the respondent.

2. From about March 1938 and subsequent thereto, the respondent sold made-to-order rubber stamps to the Linde Air Products Co. of Chicago, Ill., at 10 cents for one-line rubber stamps 3 inches in length and $\frac{3}{8}$ of an inch in height, and 7 cents for each additional line thereafter. At the same time, the respondent was selling made-to-order rubber stamps of like grade, quality, and size to other of its customers at higher prices than those charged by respondent to the Linde Air Products Co. of Chicago, Ill. Prior to purchasing the above-described rubber stamps from the respondent, the Linde Air Products Co. of Chicago, Ill., purchased its supply of rubber stamps from Martin & Co., 227 West Madison Street, Chicago, Ill., a competitor of the respondent. The prices at which respondent offered for sale and sold its rubber stamps to Linde Air Products Co. of Chicago were substantially lower than the prices previously charged and quoted by Martin & Co. to Linde Air Products Co. of Chicago and constituted the inducement to the Linde Air Products Co. of Chicago to purchase its supply of rubber stamps from the respondent.

3. From January 1938 and subsequent thereto respondent sold its made-to-order rubber stamps to Linde Air Products Co. of San Francisco, Calif., at 10 cents for a one-line rubber stamp 3 inches in length and $\frac{3}{8}$ of an inch in height and 7 cents for each additional line thereafter. At the same time, the respondent was selling made-to-order rubber stamps of the same grade, quality, and size to other of its customers at higher prices than those charged by the respondent to the Linde Air Products Co. of San Francisco. Prior to purchasing the above-described rubber stamps from the respondent, the Linde Air Products Co. of San Francisco, Calif., purchased its supply of rubber stamps from A. F. Cordray Co., 343 Kearney Street, San Francisco, Calif., a competitor of respondent. The prices at which the respondent offered for sale and sold its rubber stamps to Linde Air Products

Findings

36 F. T. C.

Co. of San Francisco were substantially lower than the prices previously quoted and charged by A. F. Cordray Co. to Linde Air Products Co. of San Francisco and constituted the inducement to Linde Air Products Co. of San Francisco to purchase its supply of rubber stamps from the respondent.

4. From April 1937 and subsequent thereto respondent sold made-to-order rubber stamps to Oxweld Acetylene Co. of Newark, N. J., at 10 cents for a one-line rubber stamp 3 inches in length and $\frac{3}{8}$ of an inch in height, and 7 cents for each additional line thereafter; and 12 cents for a one-line rubber stamp 4 inches in length and $\frac{3}{8}$ of an inch in height, and 9 cents for a one-line rubber stamp 5 inches in length and $\frac{3}{8}$ of an inch in height, and 11 cents for each additional line thereafter; and 16 cents for a one-line rubber stamp 6 inches in length and $\frac{3}{8}$ of an inch in height, and 13 cents for each additional line thereafter; and 18 cents for a one-line rubber stamp 7 inches in length and $\frac{3}{8}$ of an inch in height, and 15 cents for each additional line thereafter. At the same time, respondent was selling made-to-order rubber stamps of the same grade, quality, and size to other of its customers at higher prices than those charged by the respondent to the Oxweld Acetylene Co. of Newark, N. J. Prior to purchasing the above-described rubber stamps from the respondent, the Oxweld Acetylene Co. purchased its supplies of rubber stamps from Universal Stamp & Stationery Co., Inc., of 285 Market Street, Newark, N. J., a competitor of the respondent. The prices quoted by the respondent were substantially lower than the prices quoted by the Universal Stamp & Stationery Co., Inc., to the Oxweld Acetylene Co.

5. From December 21, 1939, and subsequent thereto, the respondent sold its made-to-order rubber stamps to the Prudential Insurance Co. of America located at Newark, N. J., at 6 cents for a one-line rubber stamp 3 inches in length and $\frac{3}{8}$ of an inch in height, and 2 cents for each additional line thereafter. At the same time, respondent was selling made-to-order rubber stamps of the same grade, quality, and size to other of its customers at higher prices than those charged by the respondent to the Prudential Insurance Co. of America of Newark, N. J.

6. During the year 1939 respondent sold its made-to-order rubber stamps to the New York, New Haven & Hartford Railroad Co. of New Haven, Conn., at 4 cents for a one-line rubber stamp 3 inches in length and $\frac{3}{8}$ of an inch in height, and 4 cents for each additional line thereafter. At the same time, the respondent was selling made-to-order rubber stamps of the same grade, quality, and size to others of

its customers at higher prices than those charged by the respondent to the New York, New Haven & Hartford Railroad Co. For several years prior to 1939, the New York, New Haven & Hartford Railroad Co. purchased its supply of rubber stamps from Spencer Stamp Works of Springfield, Mass. The substantially lower prices quoted by the respondent for stamps of similar grade, quality, and size constituted the inducement which caused the New York, New Haven & Hartford Railroad Co. to purchase its supplies of rubber stamps from the respondent during the year 1939 instead of from the Spencer Stamp Works.

7. From June 19, 1936, until the end of the year 1938 or the early part of 1939, respondent sold its made-to-order rubber stamps to the New Britain National Bank of New Britain, Conn., at 15 cents for a one-line rubber stamp 3 inches in length and $\frac{3}{8}$ of an inch in height, and 10 cents for each additional line thereafter. At the same time, it was selling made-to-order rubber stamps of the same grade, quality, and size to other of its customers at higher prices than those charged by the respondent to the New Britain National Bank of New Britain, Conn. From 1933 until June 19, 1936, the National Bank of New Britain purchased its supplies of rubber stamps from the Hartford Rubber Stamp Works of Hartford, Conn., a competitor of the respondent. The prices at which respondent sold its rubber stamps to the New Britain National Bank were substantially lower than the prices previously quoted and charged by Hartford Rubber Stamp Works to the New Britain National Bank, and constituted the inducement to the New Britain National Bank to purchase its supply of rubber stamps from the respondent.

8. From May 1938 and subsequent thereto the respondent sold its made-to-order rubber stamps to the General Electric Co. of Schenectady, N. Y., at 4 cents for a one-line rubber stamp 3 inches in length and $\frac{3}{8}$ of an inch in height and one cent for each additional line thereafter. At the same time, the respondent was selling made-to-order rubber stamps of the same grade, quality, and size to other of its customers at higher prices than those charged by the respondent to the General Electric Co. of Schenectady. From February 19, 1928, until May 1938 the General Electric Co. purchased supplies of rubber stamps from P. E. Massey & Co. at prices substantially higher than those quoted and charged to the General Electric Co. by the respondent. The sales of rubber stamps to the General Electric Co. constituted approximately 90 percent of the business of P. E. Massey & Co. In September 1940, P. E. Massey & Co. attempted to meet respondent's

Findings

36 F. T. C.

price of 4 cents a line for 3-inch rubber stamps and continued to sell rubber stamps to the General Electric Co. until about March 1941, but sales at this price were below cost of manufacture and P. E. Massey & Co. was forced to discontinue the rubber-stamp business.

PAR. 6. Typical of the varying prices charged by the respondent for its rubber stamps of like grade and quality were the varying prices charged by the respondent for its 3-inch rubber stamps $\frac{3}{4}$ of an inch or less in height. During the times that respondent was selling such 3-inch rubber stamps to the General Electric Co. of Schenectady, N. Y., at the price of 4 cents per line and 1 cent for each additional line, it was concurrently selling such 3-inch rubber stamps of like grade and quality to the New York, New Haven & Hartford Railroad Co. at 4 cents per line and 4 cents for each additional line; to Prudential Insurance Co. of America at 6 cents per line and 2 cents for each additional line; to Oxweld Acetylene Co. of Newark, N. J., at 10 cents per line and 7 cents for each additional line; to Linde Air Products Co. of New York and San Francisco at 10 cents per line and 7 cents for each additional line; and to American Airlines, Inc., at 13 cents per line and 13 cents for each additional line. During the same period, the respondent has concurrently sold to other purchasers 3-inch rubber stamps of like grade and quality at varying prices of 5 cents, 7 cents, 8 cents, 15 cents, 20 cents, and 30 cents and in each instance an additional sum for each additional line. The Commission concludes and finds as a fact that the price differences, such as those herein described, are, in the circumstances of this case, material in that the effect thereof upon competition with the respondent was and may be substantially to lessen competition with the respondent in the sale and distribution of rubber stamps and to otherwise, injure, destroy, or prevent such competition.

PAR. 7. The acts and practices of the respondent as hereinabove described constituted discriminations in price between different purchasers of rubber stamps of like grade and quality, and the lower prices so charged by the respondent were not made in good faith to meet an equally low price of a competitor. There is no evidence that such differences in price were based upon differences in cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such rubber stamps were sold or delivered to various purchasers thereof.

Such acts and practices of the respondent have the capacity and tendency to induce the purchase of respondent's rubber stamps by various users thereof and have tended to, and do, divert trade to the respondent from its competitors. The lower prices at which respondent offered for sale and sold its rubber stamps to users thereof to induce the purchase of respondent's rubber stamps in preference to

those of its competitors had a substantially injurious effect upon competition in the sale and distribution of rubber stamps in commerce between and among the various States of the United States, and in some instances respondent's prices were such that competitors could not meet such prices without suffering a loss on such business and in one instance a competitor was forced out of business as the result of such acts and practices of the respondent.

CONCLUSION

The Commission concludes that the discriminations in price as hereinabove set forth have resulted, and do result, in substantial injury to respondent's competitors, hinder, obstruct, and tend to suppress competition with respondent and tend to create a monopoly in the respondent in the sale and distribution of rubber stamps in commerce as "commerce" is defined in the Clayton Act, and violate subsection (a) of section 2 of an act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by the act of June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, including stipulation as to certain facts entered into between W. T. Kelley, chief counsel for the Federal Trade Commission, and the respondent, which provides, among other things, that the facts set out therein may be made part of the record, report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that respondent has violated subsection (a) of section 2 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act of June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondent Samuel H. Moss, Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device in the sale of rubber stamps in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Order

36 F. T. C.

1. Discriminating directly or indirectly in the price of rubber stamps of comparable size and like grade and quality by selling such rubber stamps to any purchaser at a price or prices materially different from those at which sales are made to any other purchaser: *Provided, however,* That this prohibition shall not be construed as prohibiting differentials permitted by section 2 of the Clayton Act.

2. Otherwise discriminating in price, either directly or indirectly, among different purchasers of rubber stamps of like grade and quality in any manner prohibited by section 2 (a) of the said Clayton Act as amended.

It is further ordered, That 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
MEYER DORFMAN AND ARTHUR COHLER, TRADING
UNDER THE NAME OF STETSON FELT MILLS

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

Docket 4234. Complaint, Aug. 14, 1940—Decision, May 5, 1943

Where two individuals, engaged in the manufacture and interstate sale of felt rugs; in carrying on said business under a sales plan consisting of false representations and fraudulent schemes—

(a) Represented, directly and through their salesmen, that they were connected with John B. Stetson Co. of Philadelphia, and that the felt used in their rugs was obtained from trimmings of felt hats made by said company;

The facts being they had no connection with said company, had never purchased any material directly from it, and made no use of any such material except incidentally where some of it might possibly have come into the hands of dealers who bought hat remnants and resold to them, possibility of which did not warrant any such representation as aforesaid; and

(b) Made use directly and through their salesmen of practice of padding orders, by placing upon order blanks quantities of goods greatly in excess of those actually contracted for by the particular purchaser, and shipping to such purchaser merchandise greatly in excess of that actually ordered by him; and in carrying out such practice—

(1) Made use directly and through their salesmen of confusing order blanks and, in addition, neglected to extend the totals of the various purchases thereon so that purchaser could immediately determine the amount which he was buying;

(2) Placed notations, in some instances, upon orders indicating additional purchases or the purchase of more expensive merchandise, which were confusing and not readily recognizable as such upon preliminary examination of the order by the customer upon signing;

(3) Through such means induced customers on numerous occasions to sign orders without realizing that the items thus enumerated were greatly in excess of those desired by the purchaser and greatly in excess of the amount which he had instructed the salesman to place thereon;

(4) Invariably refused, if purchaser upon later examination of the order blank or after receipt of shipment attempted to cancel order, to accept such cancellation or return of merchandise unless purchaser would pay their designated cost of handling, usually specified by them as 19 percent of the total amount of the order; and

(5) Attempted to and did collect from such purchasers larger sums than they originally agreed or expected to pay, and in many instances collected damages for cancellation of such orders by threats to sue and other forms of intimidation;

With effect, through such deceptive and misleading acts and practices, of causing a substantial portion of the purchasing public erroneously to believe that said representations were true, and to purchase said rugs because of such belief, and to pay larger sums of money to said individuals than they originally agreed or expected to pay:

Complaint

36 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. Miles J. Furnas*, trial examiner.

Mr. Clark Nichols, *Mr. J. V. Mishou* and *Mr. B. G. Wilson* for the Commission.

O'Connell & Gingold and *Ulvin & Christensen*, of St. Paul, Minn., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Meyer Dorfman and Arthur Cohler, trading under the name Stetson Felt Mills, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Meyer Dorfman and Arthur Cohler, are individuals, trading under the name Stetson Felt Mills, with their principal place of business located at 223 East Fourth Street, St. Paul, Minn. Respondents are now, and for more than 2 years last past have been, engaged in manufacturing and selling felt rugs and felt pillows. The felt rugs and pillows are manufactured by respondents from waste material purchased from different manufacturers of felt products and from the felt contained in rejected felt hats. The respondents advertise their products partly through circulars and placards, but mostly through representations made by the respondents and salesmen employed by them to prospective purchasers. Said felt material is cut into appropriate lengths and assembled in appropriate colors and run through looms which manufacture the rugs and pillows.

Respondents cause their said products, when sold, to be transported from their place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business in said commerce as aforesaid, and for the purpose of inducing the purchase of their said products, the respondents have circulated among prospective purchasers circulars containing representations as to the quality of their

said products. Typical of the statements made to prospective purchasers by the respondents, as aforesaid, are the following:

The method of utilizing the waste from felt mills and hat factories into beautiful hand-woven fire-resisting floor mats has been developed by the Stetson Felt Mills with the result that Stetson floor mats are instantly acknowledged as a practical long-looked-for addition to the hardware and floor covering lines.

Stetson mats are washable and easy to clean, primarily made for use around stoves, gas heaters and fire places.

Fire-resisting Stetson Floor Mats.

A remarkable product made *by hand* from fur and wool felt.

Respondents and salesmen employed by them have represented to purchasers and prospective purchasers that the Stetson Felt Mills is connected with, or an affiliate of, John B. Stetson Co. of Philadelphia, Pa., and that the felt used in making respondents' rugs and pillows is obtained from trimmings from felt hats manufactured by John B. Stetson Co. The John B. Stetson Co. is one of the outstanding and best-known felt hat manufacturing concerns in the United States, and it has the good will and esteem of a substantial portion of the purchasing public. Its products are well and favorably known to the public as being made from high quality felt.

In connection with the sale of their said products, the respondents and their salesmen exhibit to prospective purchasers and purchasers samples of felt rugs and felt pillows made of felt of a quality superior to the felt used in the manufacture of the rugs and pillows delivered to purchasers.

Through the use of the foregoing statements made and used as aforesaid and others of similar import and meaning not herein set out, and the use of the acts and practices aforesaid, respondents represent and imply that the rugs and pillows offered for sale and sold by them are fire-resistant or fire-proof; that they are hand-made; that the rugs and pillows shipped to purchasers will be of the grade and quality of the samples displayed; that respondents are connected with, or an affiliate of, the John B. Stetson Co. of Philadelphia, Pa.; and that the respondents' rugs and pillows are made from felt trimmings obtained from the John B. Stetson Co. of Philadelphia, Pa.

In truth and in fact, the rugs and pillows offered for sale and sold by respondents are not fire-resistant or fire-proof; they are not hand-made; the rugs and pillows shipped to purchasers are not of the grade and quality of the samples displayed, but are inferior in grade and quality; the respondents are not connected with, or an affiliate of, the John B. Stetson Co. of Philadelphia, Pa.

PAR. 3. Respondents and their salesmen have adopted and used the practice of "padding" orders given them orally by purchasers by

stating in the written order blank a quantity of goods greatly in excess of that actually contracted for by a particular purchaser. Respondents have attempted to, and do, collect from such purchasers larger sums of money than such purchasers originally agreed to pay, by threats to sue and other forms of intimidation.

PAR. 4. The use by the respondents of the foregoing false and misleading statements and representations and the foregoing acts and practices, 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 that said products are of the quality and grade indicated by the samples displayed and that purchasers are bound by the terms and conditions of said "padded" orders; and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said products and to pay for products not ordered in many instances.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 14, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Meyer Dorfman and Arthur Cohler, individuals, trading as Stetson Felt Mills, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of 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, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Meyer Dorfman and Arthur Cohler, are individuals, trading under the name of Stetson Felt Mills, with their principal place of business located at 223 East Fourth Street, St. Paul, Minn. Respondents are now, and for several years last past have been, engaged in the manufacture and sale, among other things, of felt rugs. Respondents cause said rugs, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said rugs in commerce among and between the various states of the United States.

PAR. 2. In the course and conduct of their business and for the purpose of inducing the purchase of their said rugs, the respondents have made use of a sales plan consisting of false representations and fraudulent schemes. In carrying out such false and fraudulent sales plan, it was the custom of respondents and their salesmen to variously represent to prospective purchasers that they were connected with John B. Stetson Co. of Philadelphia or that the felt used in the making of respondents' rugs was obtained from trimmings from felt hats manufactured by John B. Stetson Co.

When the respondents originally started the manufacture of felt rugs, they used felt obtained from old or used hats. While some of the hats so used may have been Stetson hats, no particular effort was made by the respondents to get Stetson hats for their rugs but, instead, respondents purchased their old or used hats from various dealers engaged in collecting and selling such merchandise. In later years the respondents have discontinued the purchase and use of used hats and, instead, purchase felt remnants for the manufacture of their rugs direct from the mills which manufacture felt or through dealers in felt scrap who purchase from the various mills; and, in addition, the respondents also use hat remnants, which consist of circles of felt left over when the hat is completed, which are known to the trade as "felt circles." Such hat remnants are purchased from various dealers who accumulate such material. Said felt material is cut into appropriate lengths, assembled in appropriate colors, and run through hand looms, which make respondents' rugs.

The respondents have no connection with J. B. Stetson Co. of Philadelphia and have never purchased any material direct from the J. B. Stetson Co. The respondents do not use any material purchased from the J. B. Stetson Co. except incidentally where some of such material may possibly have come into the hands of dealers who buy hat remnants and who resell to the respondents. The possibility that some of

Findings

36 F. T. C.

the hat remnants purchased by the respondents from various dealers might contain some hat remnants from the J. B. Stetson Co. does not warrant any representation that respondents' rugs are made from remnants from hats manufactured by the J. B. Stetson Co.

PAR. 3. As a further part of respondents' false and fraudulent sales plan, it was the custom of the respondents and their salesmen to use the practice of padding orders by placing upon order blanks quantities of goods greatly in excess of that actually contracted for by the particular purchaser and shipping to such purchaser merchandise greatly in excess of that actually ordered by him.

In carrying out this practice the respondents and their salesmen used order blanks which were to some extent confusing and, in addition thereto, failed and neglected to extend the totals of the various purchases on said order blanks so that the purchaser could immediately determine the amount of the merchandise which he was purchasing. In some instances notations were placed upon orders indicating additional purchases or the purchase of more expensive merchandise, which notations were confusing and not readily recognizable as such upon preliminary examination of the order by the customer upon signing. By these means, the respondents and their salesmen, on numerous occasions, induced purchasers to sign orders without realizing that the items so enumerated on said order were greatly in excess of those desired by such purchasers and greatly in excess of the amount which the purchaser had instructed the salesmen to place upon such orders. If the purchaser, upon later examination of the order blank or after receipt of shipment, attempted to cancel the order with the respondents, the respondents invariably refused to accept such cancellation or to accept return of the merchandise unless the purchaser would pay respondents' designated cost of handling, which was usually specified by the respondents as 19 percent of the total amount of the order. Respondents attempted to, and did, collect from such purchasers larger sums of money than such purchasers originally agreed or expected to pay and in many instances collected damages for cancellation of such orders by threats to sue and other forms of intimidation.

PAR. 4. The use by the respondents of the foregoing acts and practices is deceptive and misleading and causes a substantial portion of the purchasing public erroneously to believe that said statements and representations are true and that respondents are connected with the J. B. Stetson Co. or that the rugs sold and distributed by the respondents are manufactured from trimmings from felt hats manufactured by J. B. Stetson Co., and causes a substantial portion of the purchasing public to purchase respondents' rugs because of such erroneous

beliefs. Said acts and practices have the further tendency and effect of causing purchasers in many instances to pay for rugs in excess of those ordered by them and to pay larger sums of money to the respondents than such purchasers originally agreed or expected to pay.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence 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, 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Meyer Dorfman and Arthur Cohler, individuals, trading as Stetson Felt Mills, 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 felt rugs and other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that the respondents are a part of, or that they are in any way connected with, the John B. Stetson Co. of Philadelphia.
2. Representing directly or by implication that respondents' rugs are manufactured from trimmings from felt hats manufactured by the John B. Stetson Co.
3. The use of any sales plan or method which misleads or deceives purchasers or enables respondents' salesmen to mislead or deceive purchasers, as a means of obtaining orders from such purchasers for rugs or other merchandise in quantities greater than that which such purchasers order or expect to receive, or which enables the obtaining of orders in amounts greater than such purchasers intend or expect to pay.

Order

36 F. T. C.

4. The use of any sales plan or method which involves the preparation of orders in such a manner that the purchasers cannot readily determine the quantity of rugs or other merchandise ordered or the amount to be paid, as a means of inducing the purchase of greater quantities of such merchandise than that desired or the payment of amounts greater than such purchaser expects or intends to pay.

5. The use of any sales plan or method which involves the placing of notations on orders indicating additional purchases or the purchase of additional rugs or other merchandise which are not readily recognizable as such upon reading of the order at the time signature is attached.

6. Preparing orders for quantities of rugs or other merchandise in excess of the quantities requested by purchasers and obtaining the signature of such purchasers to such orders without disclosing that the order has been prepared for quantities in excess of those desired by such purchasers.

7. Refusing to accept the return of rugs or other merchandise shipped in excess of the amount ordered or requiring a purchaser to pay any sum as damages in order to induce respondents to accept return of such excess rugs or other merchandise.

8. Coercing or attempting to coerce purchasers, by threats to sue or by other forms of intimidation, into accepting rugs or other merchandise in excess of the quantity ordered by such purchasers, or into paying sums of money in excess of that which such purchasers agree or expect to pay.

9. Coercing or attempting to coerce purchasers, by threats to sue or by other forms of intimidation, into paying damages to the respondents for cancelation of orders for quantities of rugs or other merchandise in excess of that ordered by such purchasers, or for amounts in excess of that which such purchasers agree or expect to pay.

10. Coercing or attempting to coerce purchasers, by threats to sue or by other forms of intimidation, into paying damages to the respondents to induce the acceptance of the return of rugs or other merchandise delivered by respondents in excess of the amount ordered.

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
MYRON TROTCKY, TRADING AS FRANKLIN 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 4782. Complaint, July 14, 1942—Decision, May 5, 1943

Where an individual, engaged in competitive interstate sale and distribution of glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes in sale and distribution thereof, and distribution to the purchasing public of push cards, depictions of his merchandise, and circulars explaining his plan of allotting the merchandise involved as premiums or prizes to the operators of the push cards and consuming public, under which, as typical, the person selecting the feminine name on the push card found to correspond with that concealed under the card's master seal received, in accordance with explanatory legend thereon, a set of glasses, the number secured from disc adjacent to feminine name selected determined amount paid for chance, and chance selection of a certain number also entitled person securing name to a combination pen and pencil; a similar plan involving a 48-name push card entitling the winner to his choice of four articles announced thereon, including "monogrammed" combination cigarette and compact cases, while two numbers entitled holders to "Guaranteed combination pen and pencil"; and thereby

Supplied to and placed in the hands of others who sold his merchandise in accordance with such plans, involving game of chance to procure an article at much below its normal price, means of conducting lotteries in the sale thereof, contrary to an established public policy of the United States Government and in competition with many who do not use such methods;

With the result that many persons were attracted by said plan and the element of chance involved therein, and were thereby induced to buy and sell his merchandise in preference to that of his competitors aforesaid, with tendency and capacity unfairly to divert to him from them substantial trade in commerce:

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

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

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Myron Trotcky, an individual, trading as Franklin Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing

Complaint

30 F. T. C.

to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Myron Trotcky, is an individual, trading and doing business under the name of Franklin Sales Co., with his office and principal place of business located at 212-214 South Franklin Street, Chicago, Ill. Respondent is now, and has been, for more than 6 months last past, engaged in the sale and distribution of glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of merchandise. Respondent 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 now 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 purchasers thereof. The method of sales plans adopted and used by the respondent is substantially as follows:

Respondent distributes and has distributed to operators and the purchasing public certain literature and instructions including among other things push cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 19 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. On the face of the card under each feminine name is a small perforated disc and concealed in each of said discs is a number which is disclosed only when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine

659

Complaint

names appearing on said discs. The person selecting the disc bearing feminine name corresponding to the one under the master seal receives a set of glasses. The push card bears the following legend or instruction:

**FOR REAL ACTION GET YOUR
SET OF 6 MAGICAL GLASSES!**
Six sensational poses! Each one
different! Each one Exciting!

Select the Names of Your Favorite Lasses!
Get a Set of 6 Mystifying Glasses!

No. 1 pays 1c, No. 11 pays 11c,
No. 22 pays 22c, No. 26 pays 26c.
All others pay only 29c NONE HIGHER.

(Feminine names and discs)

(Master Seal)
(Name under here
Receives 6 Magical
Glasses)

No. 29 receives a Combination Pen and Pencil.

Another of respondent's sales plans consists of circular letters, advertising statements and a push card. This push card is similar to the one described except that it bears 48 feminine names and partially perforated discs and bears the following legend or instructions:

Select Your Favorite Girl's Name and Receive
Your Choice of These

**EVANS MONOGRAMMED
COMBINATION CASES**
Engraved with Your Own Initials

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Smart as 5th Avenue
Glamorous as Hollywood

(Depiction of cigarette cases
and compact)

Your Choice of
20TH CENTURY CLIPPER
Combination Cigarette
Case, Lighter and Watch

THE HOLLYWOOD
Combination Cigarette
Case and Watch

MISS PETITE
Combination Compact
and Watch

TWO EXTRA PRIZES
Nos. 19 and 29
Each Receives a
Guaranteed Combination
Pen and Pencil

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Complaint

36 F. T. C.

Nos. 1-5-15-19
23 etc. up to 29 Pay
What you Draw Nos. over
29 pay only 29c.

None Higher

Write Your name on reverse side opposite
name you select

Sales of respondent's merchandise by means of said push cards are made in accordance with the above described plan. 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 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 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 to win something by chance, or any other method that 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 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 July 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Myron Trotcky, an individual, trading as Franklin 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 said act. After the issuance of said complaint, 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, testimony and other evidence, report of the trial examiner upon the evidence, and brief filed in support of the complaint (no brief having been filed in opposition to the complaint and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Myron Trotcky, is an individual, trading and doing business under the name of Franklin Sales Co., with his office and principal place of business located at 212-214 South Franklin Street, Chicago, Ill. Respondent is now, and has been, for more than 6 months last past, engaged in the sale and distribution of

glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of merchandise. Respondent 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 now, 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 the 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 purchasers thereof. The method of sales plans adopted and used by the respondent is substantially as follows:

Respondent distributes and has distributed to operators and the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 19 feminine names, with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. On the face of the card under each feminine name is a small perforated disc and concealed in each of said discs is a number, which is disclosed only when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on said discs. The person selecting the disc bearing feminine name corresponding to the one under the master seal receives a set of glasses. The push card bears the following legend or instruction:

**FOR REAL ACTION GET YOUR
SET OF 6 MAGICAL GLASSES!**

Six sensational poses! Each one different! Each one Exciting!

Select the Names of Your Favorite Lasses!

Get a Set of 6 Mystifying Glasses!

No. 1 pays 1c, No. 11 pays 11c,

No. 22 pays 22c, No. 26 pays 26c.

All others pay only 29c NONE HIGHER.

(Feminine names and discs)

(Master Seal)

(Name under here

Receives 6 Magical
Glasses)

No. 29 receives a Combination Pen
and Pencil.

Another of respondent's sales plans consists of circular letters, advertising statements, and a push card. This push card is similar to the one described except that it bears 48 feminine names and partially perforated discs and bears the following legend or instructions:

Select Your Favorite Girl's Name and Receive
Your Choice of These

EVANS MONOGRAMMED

COMBINATION CASES

Engraved with Your Own Initials

(Master
Disc)

Smart as 5th Avenue
Glamorous as Hollywood

(Depiction of cigarette cases
and compact)

Your Choice of
20th CENTURY CLIPPER
Combination Cigarette
Case, Lighter and Watch

THE HOLLYWOOD
Combination Cigarette
Case and Watch

MISS PETITE
Combination Compact
and Watch

TWO EXTRA PRIZES
Nos. 19 and 29 -
Each Receives a
Guaranteed Combination
Pen and Pencil

Nos. 1-5-15-19
23 etc. up to 29 Pay
What you Draw Nos. over
29 pay only 29c.

None Higher

Write Your name on reverse side opposite
name you select

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Findings

36 F. T. C.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described plan. 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 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 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 set forth, 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 set forth, do not use said method or any method involving a game of chance to win something by chance, or any other method that 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 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.

Order

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence 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 filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Myron Trotcky, an individual, trading as Franklin Sales Co., his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of glassware, pen and pencil sets, radios, food mixers, electrical appliances, cigarette lighters, silverware, luggage, and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, push cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.
2. Shipping, mailing, or transporting to agents or to distributors or to members of the purchasing public, push cards or other devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.
3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF

WILLIAM G. NASH, SR., ET AL., TRADING AS
NASH BROTHERS DRUG COMPANY

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

Docket 3775. Complaint, Apr. 27, 1939—Decision, May 6, 1943

Where three brothers, engaged in the compounding and interstate sale and distribution of their "Nash's C. & L. Malaria Chill Tonic and Laxative"; through representations in newspapers and periodicals, form letters, circulars, folders, testimonials, and radio continuities, directly and by implication—

- (a) Represented that their said medicinal preparation was an effective treatment for malaria, and a guaranteed, unsurpassed and effective preventive and cure for all types thereof; and that it was a remedy and effective treatment for biliousness, constipation, liver troubles, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and disorders;
- (b) Represented that use thereof would clean out the system and restore the normal functioning of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that it was an effective tonic which would restore vigor and vitality; that use thereof both prevented and cured colds; and that it was a new discovery which was in no way habit-forming or harmful to users, young or old;

The facts being that, while said product was an anti-malaria preparation and laxative, it was not a competent or effective treatment for the cure of malaria in that, taken in accordance with the directions on its label, it would not provide the minimum alkaloid content necessary; though daily use thereof in the proper dosage over a long period of time would be a competent and effective treatment for such purpose, prolonged administration thereof, due to the presence of the cathartic drugs phenolphthalein and F. E. Mandrake, would be likely to be harmful and habit-forming; and, while a competent treatment for the temporary relief of biliousness and constipation, it was, as aforesaid, habit-forming, and might be harmful if taken by those suffering from abdominal pains, nausea, or other symptoms of appendicitis; and claims that it constituted a cure or effective treatment for the other conditions or diseases specified constituted false advertisements; and

- (c) Falsely represented that said preparation was endorsed by nurses, physicians, school teachers, and health officials throughout the southern part of the United States; and that 9 persons out of 10 residing in said part of the United States had malaria; and
- (d) Represented that if an individual, among other things, trembled all over, lacked energy, ached or was bilious, constipated, nervous, depressed, sleepless, broken out, etc., or had upset stomach, dizzy spells, chills, occasional fever, hot and cold flashes, liver disorders, improper functioning of the kidneys, etc., or if a child was unruly, irritable, listless, or sluggish, then such person or child was exhibiting symptoms of malaria, and its said preparation was a competent and effective treatment therefor;

668

Complaint

The facts being that while ague, chills, third-day chills, fever, swamp chills, or hot and cold flashes may and often do accompany an attack of malaria and are recognized as symptoms thereof, and while, if said symptoms are caused by malaria, its preparation would be a competent and effective treatment if used in the proper therapeutic doses over a sufficient period of time, it would not, as noted above, be such if taken according to the directions on the label; and existence of the other disorders or conditions set forth above, does not indicate malaria;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true; and with tendency and capacity to induce it, because of such mistaken belief, to purchase said preparation:

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

Mr. John W. Carter, Jr., for the Commission.

Mr. Clinton Robb, 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 William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually and as copartners trading as Nash Brothers Drug 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 William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox are individuals and copartners trading as Nash Brothers Drug Co., and their principal office and place of business is in Jonesboro, Ark.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic." Respondents sell said preparation to members of the purchasing public situated in various States of the United States and in the District of Columbia, and cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of Arkansas to the purchasers thereof at their respective points of location in the various States of the United States, other than the State of Arkansas, and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in commerce in

said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of 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 insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State in which such broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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:

1. Check these Symptoms Yourself—on yourself—and on your family! See How Many of These Symptoms You Have

Are you always tired, or completely run down and worn out? Do you feel lazy?

Do you wake up in the morning as tired as when you went to bed?

Are you restless at night. Can't sleep?

Then have bad dreams and nightmares?

Do you lack energy and pep? Do you lack ambition?

Do you ache in every bone of your body?

Do you have chills and occasional fever—hot and cold flashes?

Are you bilious? Constipated?

Are you nervous and irritable?

Are you blue and depressed? Do you have foolish fears and dreads?

Are you unduly superstitious?

Is your breath bad? Tongue coated? Bad taste in the mouth?

Is your complexion sallow, yellow, or broken out with pimples, boils or unsightly blotches?

Do you have occasional or habitual dull or sick headaches?

Do you have backaches?

Are there floating specks before your eyes?

Are you dizzy?

Are you losing weight?

Complaint

Do you suffer from indigestion or loss of appetite?

Is your liver out of order?

Do you have gas on the stomach? Sour stomach?

Stomach constantly upset?

Have you a cold you can't get rid of?

Are your kidneys functioning improperly or abnormally?

Do your knees and hands shake?

Do you tremble all over?

Are your children unruly, irritable, restless and sluggish?

IF you have any of these symptoms no doubt you are suffering from the first—or maybe the more serious stages of malaria.

2. NASH'S TONIC will clean out your system, allowing the bowels to have satisfactory action—will add red corpuscles to the blood, aid digestion, increase the appetite, tone up the system, and give you plenty of Pep, viz, vim, and vigor.

3. Satisfaction Guaranteed and again, Remember This is a Guaranteed Remedy. You can take one dose or the entire bottle, and if you are not satisfied, take the empty bottle to your Druggist and he will refund your money without question or quibble. So you have nothing to lose and everything to gain.

4. For Malaria, Biliousness, Constipation Nash's Tonic is a guaranteed remedy unsurpassed for chills and malaria and its kindred or resulting ailments—biliousness, constipation, stomach trouble, liver trouble, dyspepsia, backache, headache, nervousness and other complaints and diseases. It will kill the chill before the ill, and stop that fever that may be brewing. It will eliminate those poisons which may be forming and which are causing those physical and mental pains and perhaps unhappiness. It is a purgative as well as a preventive and will brace up your body with the finest tonic ever had. Kills malaria germs!

If you have malaria, get rid of it; if you haven't it, keep from having it with "Nash's."

5. Chills and Malaria will be but a rare thing, when more people recognize this New Discovery.

6. Even if you don't think you have Malaria, it can do you no harm—and will do you much good to take Nash's Tonic regularly.

7. The All Year Round Tonic, Remedy, Purgative, Preventive! Nash's Tonic is great for those lazy, languid Spring days, excellent during the sluggish Summer, a great Tonic for Fall and a fine cold preventive for Winter. It is therefore an all-year-round remedy—particularly for malaria and biliousness, chills, fever, ague, third day chills, swamp chills, constipation, stomach troubles, etc. It is also a preventive for it will tend to prevent you from having malaria as well as numerous other ailments, etc. As a purgative it banishes constipation and its serious afflictions, and as a tonic, good for children as well as all others, it will put the body in excellent trim, add red corpuscles to the blood and red color to the cheeks.

8. For Baby—For Grandma And All Ages in Between Nash's Tonic is for one and all—the baby—the child—the young man and woman—Mother and Father—Grandma and Grandpa! It will give the child a healthy body, and a chance to grow and develop without germs or disease hindering—it will give the young folks pep, vigor, vitality, and help them "keep going" in this day of never-ceasing Going—it will make Mother and Father feel "that they're still young folks"—that they have much to live for and look forward to—that they can take a new lease on life—and it will add years to the old folks.

9. School Teachers—Health Officials and Others Endorse Nash's Tonic.

Complaint

36 F. T. C.

10. This new Discovery is endorsed by physicians because they appreciate the formula, which is known.

11. Yes, indeed—you can take Nash's Tonic with every confidence in the world, and your Physician will pass on the above ingredients. Nash's Tonic is in no way harmful, and is not unpleasant to take. Not a habit-forming medicine.

12. * * * thousands and thousands of Southerners (9 out of 10 have malaria * * *)

PAR. 4. Through the use of the statements and representations hereinbefore set forth and others similar in meaning thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondents have represented, directly and by implication, among other things, that each and all of the symptoms enumerated herein in paragraph 3 (1) are caused by or associated with malaria and that persons having any one or more of such symptoms have malaria; that said preparation is a proper, guaranteed, unsurpassed, and effective preventative and remedy or cure for all types of malaria in the human body; that the use of said preparation will clean out the system and restore the normal function of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that said preparation is an effective tonic which will restore vigor and vitality; that said preparation possesses remedial or curative value in the treatment of constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and diseases to which the human body is subject; that the use of said preparation both prevents and cures colds; that said preparation is a new discovery which is in no way habit-forming and which is in no way harmful to the users thereof, including infants, children, adults, and elderly people; that said preparation is endorsed by nurses, physicians, and health officials throughout the southern part of the United States; and that 9 out of 10 of the people residing in the southern part of the United States have malaria.

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

In truth and in fact only two of the symptoms enumerated herein in paragraph 3 (1), namely, chills and occasional fevers, are symptoms of malaria. Said preparation is not a proper, effective, or unsurpassed remedy or cure for all types of malaria, and its use will not prevent the development of malaria in the human body. The use of said preparation will not restore the normal functioning of the

bowels, nor will it add red corpuscles to the blood, aid digestion, or increase the appetite. Said preparation is not an effective tonic which will restore vigor or vitality. Said preparation is not an effective remedy or cure for constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach troubles, chills, fever, ague, third-day chills, swamp chills, or for any other of the various diseases and conditions to which the human body is subject. It is habit forming in the sense that the continued use of laxative or cathartic medicine is habit forming. Said preparation will not prevent nor will it cure colds. Said preparation is not a new discovery, and it is not a safe and harmless medicine for use in all cases by infants, children, adults, and elderly people, as represented and advertised by the respondents. Said preparation has not been endorsed by nurses, physicians, and health officials throughout the southern part of the United States, nor do 9 out of 10 people in the southern part of the United States have malaria. In fact, only a small percentage of persons residing in the southern part of the United States have malaria.

Respondents' statements and claims as to the therapeutic value and efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceed any claims to the therapeutic value and efficacy of such preparation which might truthfully be made. Although said preparation may possess properties capable under certain conditions of use of having a beneficial effect in the treatment of certain forms of malaria at certain stages of development, said preparation is not a remedy or cure or safe and effective treatment for all forms or types of malaria.

Furthermore, said statements and representations are misleading and constitute false advertisements in that they fail to reveal the fact that the drugs "quinidine" or "quinidine alkaloids" and "cinchonine alkaloids," as used in said preparation, have a powerful effect upon the heart and upon other organs or parts of the body which may cause injury to the health of the user if taken in accord with the statements and recommendations contained in said advertisements, or under such conditions as are customary or usual.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of respondents' said preparation which contains drugs.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute

Findings

36 F. T. C.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission on the 27th day of April 1939, issued, and on the 29th day of April 1939, served its complaint on William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually, and as copartners, trading as Nash Brothers Drug Co., charging these respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. No answer was filed by the respondents.

On July 26, 1939, a stipulation as to the facts was entered into and approved by the Commission, upon which the Commission based its findings as to the facts and, on the 1st day of August 1939, issued its cease-and-desist order. Thereafter, to wit, on the 30th day of July 1942, a petition was filed by Assistant Chief Counsel Whiteley praying (for reasons therein assigned) that the stipulation as to the facts, findings as to the facts, and the order to cease and desist be vacated and set aside, and the case reopened for the purpose of receiving such competent testimony and other evidence in support of or in opposition to the complaint as might be offered.

On the 3d day of August 1942 the Commission issued, and on the 5th day of August 1942, served on the respondents its order (together with a copy of the aforesaid petition) fixing the time and the place when and where a hearing would be held on said petition. Thereafter, to wit, on the 31st day of August 1942, the Commission issued and on the 3d day of September 1942, served on these respondents its order vacating and setting aside the aforesaid stipulation of facts, findings as to the facts, and order to cease and desist, and ordering that this case be reopened for the purpose of receiving such competent testimony and other evidence in support of or in opposition to the complaint as might be offered.

On the 24th day of September 1942, the attorney for these respondents filed an answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that the statement of facts (and exhibits thereto attached) signed and executed by the respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in lieu of testimony in support of or in opposition to the charges stated in the complaint, and the said Commission might proceed upon said statement of facts

and the exhibits thereto attached to make its report, stating its findings as to the facts (including inferences which it might 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 filing of briefs, and without the filing of the trial examiner's report upon the evidence.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, are individuals and copartners, trading as Nash Brothers Drug Co., with their principal office and place of business located in Jonesboro, Ark., and they are now, and for more than 1 year last past have been, engaged in the compounding of a medical preparation formerly designated "Nash's C. & L. Tonic," now designated "Nash's C. & L. Malaria Chill Tonic and Laxative," and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. These respondents cause their said medicinal preparation, designated as aforesaid, when sold, to be transported from their place of business in the State of Arkansas to the purchasers thereof located in various other States of the United States and in the District of Columbia and they maintain, and at all times mentioned herein, have maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and in the furtherance of the sale and distribution of the said medicinal preparation, designated as aforesaid, these respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of, advertisements concerning their aforesaid medicinal preparation by the United States mails, and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and these respondents have also disseminated, and are now disseminating and have caused and are now causing the dissemination of, advertisements concerning their said medicinal preparation, designated as aforesaid, by various means, for the purpose of inducing and

which are likely to induce, directly or indirectly, the purchase of said medicinal preparation, in commerce, as commerce is defined in the Federal Trade Commission Act.

All advertising material used by respondents is disseminated, as aforesaid, through the following media:

- (a) Newspapers and periodicals;
- (b) Form letters;
- (c) Circulars, folders, and testimonials, and
- (d) Radio continuities.

Among and typical of the statements and representations disseminated and caused to be disseminated by the United States mails, in newspapers and periodicals, radio continuities, circulars, form letters, testimonials, and other advertising media prior to May 1939, are the following:

(1) CHECK these SYMPTOMS YOURSELF—on yourself—and on your family! See How Many of These SYMPTOMS You Have

Are you always tired, or completely run down and worn out? Do you feel lazy?

Do you wake up in the morning as tired as when you went to bed?

Are you restless at night? Can't sleep?

Then have bad dreams and nightmares?

Do you lack energy and pep? Do you lack ambition?

Do you ache in every bone of your body?

Do you have chills and occasional fever—hot and cold flashes?

Are you bilious? Constipated?

Are you nervous and irritable?

Are you blue and depressed? Do you have foolish fears and dreads?

Are you unduly superstitious?

Is your breath bad? Tongue coated? Bad taste in the mouth?

Is your complexion sallow, yellow, or broken out with pimples, boils or unsightly splotches?

Do you have occasional or habitual dull or sick headaches?

Do you have backaches?

Are there floating specks before your eyes?

Are you dizzy?

Are you losing weight?

Do you suffer from indigestion or loss of appetite?

Is your liver out of order?

Do you have gas on the stomach? Sour stomach?

Stomach constantly upset?

Have you a cold you can't get rid of?

Are your kidneys functioning improperly or abnormally?

Do your knees and hands shake?

Do you tremble all over?

Are your children unruly, irritable, restless and sluggish?

IF you have any of these symptoms no doubt you are suffering from the first—or maybe the more serious stages of malaria.

(2) NASH'S TONIC will clean out your system, allowing the bowels to have satisfactory action—will add red corpuscles to the blood, aid digestion, increase the appetite, tone up the system, and give you plenty of PEP, viz, vim and vigor.

(3) SATISFACTION GUARANTEED and again, REMEMBER THIS IS A GUARANTEED REMEDY. You can take one dose or the entire bottle, and if you are not satisfied, take the empty bottle to your Druggist and he will refund your money without question or quibble. So you have nothing to lose and everything to gain!

(4) FOR MALARIA, BILIOUSNESS, CONSTIPATION NASH'S TONIC is a guaranteed remedy, unsurpassed for chills and malaria and its kindred or resulting ailments—billiousness, constipation, stomach trouble, liver trouble, dyspepsia, backache, headache, nervousness and other complaints and diseases. It will kill the chill before the ill, and stop that fever that may be brewing. It will eliminate those poisons which may be forming and which are causing those physical and mental pains and perhaps unhappiness. It is a purgative as well as a preventive and will brace up your body with the finest tonic ever had. Kills malaria germs!

If you have malaria, get rid of it; if you haven't it, keep from having it with "NASH'S".

(5) Chills and Malaria will be but a rare thing, when more people recognize this New Discovery.

(6) Even if you don't think you have Malaria, it can do you no harm—and will do you much good to take NASH'S TONIC regularly.

(7) THE ALL YEAR ROUND TONIC, REMEDY, PURGATIVE, PREVENTIVE!

NASH'S TONIC is great for those lazy, languid Spring days, excellent during the sluggish Summer, a great Tonic for Fall and a fine cold preventive for Winter. It is therefore an all-year-round remedy—particularly for malaria and billiousness, chills, fever, ague, third-day chills, swamp chills, constipation, stomach troubles, etc. Is also a preventive for it will tend to prevent you from having malaria as well as numerous other ailments, etc. As a purgative it banishes constipation and its serious afflictions, and as a tonic, good for children as well as all others, it will put the body in excellent trim, add red corpuscles to the blood and red color to the cheeks.

(8) FOR BABY—FOR GRANDMA And All Ages in Between

NASH'S TONIC is for one and all—the baby—the child—the young man and woman—Mother and Father—Grandma and Grandpa! It will give the child a healthy body, and a chance to grow and develop without germs or disease hindering—it will give the young folks pep, vigor, vitality, and help them "keep going" in this day of never-ceasing GOING—it will make Mother and Father feel "that they're still young folks"—that they have much to live for and look forward to—that they can take a new lease on life—and it will add years to the old folks.

(9) SCHOOL TEACHERS—Health Officials and Others Endorse NASH'S TONIC.

(10) This new Discovery is endorsed by physicians because they appreciate the formula, which is known.

(11) Yes, indeed—you can take NASH'S TONIC with every confidence in the world, and your Physician will pass on the above ingredients. NASH'S TONIC is in no way harmful, and is not unpleasant to take. Not a habit-forming medicine.

(12) * * * thousands and thousands of Southerners (9 out of 10 have malaria * * *)

Through the use of the statements and representations hereinabove set forth, and the statements and representations contained in respondents' exhibits 1 to 30, inclusive, disseminated as aforesaid, and in other statements and representations of similar import but not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' medicinal preparation, "Nash's C. & L. Malaria Chill Tonic and Laxative," respondents represent, directly and by implication, among other things, that the said medicinal preparation is a cure and remedy and constitutes an effective treatment for malaria, biliousness, constipation, liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and diseases to which the human body is subject; that said preparation is a proper, guaranteed, unsurpassed, and effective preventive and remedy and cure for all types of malaria in the human body; that the use of said preparation will clean out the system and restore the normal functioning of the bowels, add red corpuscles to the blood, aid digestion; and increase the appetite; that said preparation is an effective tonic which will restore vigor and vitality; that the use of said preparation both prevents and cures colds; that said preparation is a new discovery which is in no way habit forming and which is in no way harmful to the users thereof, including infants, children, adults, and elderly people; that said preparation is endorsed by nurses, physicians, school teachers, and health officials throughout the southern part of the United States; and that 9 out of 10 persons residing in the southern part of the United States have malaria.

PAR. 4. Respondents further represent, directly and by implication, in the manner and by the means aforesaid, that if an individual trembles all over, lacks energy, pep, or ambition, aches in every bone of the body; or

If an individual is bilious, constipated, nervous, irritable, blue, depressed, worn out, losing weight, unduly superstitious, always tired, completely run down, restless at night and cannot sleep, broken out with pimples, boils, or unsightly splotches; or

If an individual has sour stomach, gas on the stomach, upset stomach, backache, dizzy spells, bad breath, indigestion, nightmares, chills, occasional fever, bad dreams, coated tongue, hot and cold flashes, foolish fears and dreads, bad taste in the mouth, occasional or habitual dull or sick headaches, sallow, yellow complexion, floating specks before the eyes, chronic colds, shaking hands and knees, liver disorders, improper or abnormal functioning of the kidneys; or

If a child is unruly, irritable, restless, or sluggish, then such person, individual or child, as the case may be, is exhibiting symptoms, manifestations or conditions indicating that such person, individual, or child is suffering from malaria and that the medicinal preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" is a competent and effective treatment for such symptoms and conditions.

PAR. 5. The foregoing representations and advertisements, and others of similar import not specifically set out herein, are grossly exaggerated and misleading, and constitute false advertisements.

Respondents' medicinal preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" is compounded in 100-gallon lots.

The quantitative formula is:

Quinidine Alkaloid.....	130 ozs.
Cinchonine Alkaloid.....	65 ozs.
Phenolphthalein, White.....	55 ozs.
F. E. Mandrake.....	145 ozs.
Simple Syrup, Q. S.....	100 gals.

The directions for use appearing on the label are:

As a laxative and Quinidine and Cinchonine tonic children, 6 to 8 years old, 1 teaspoonful; 8 to 12 years old, 2 teaspoonfuls; 12 to 16 years old, 3 teaspoonfuls; Adults, a tablespoonful. Take a dose every four hours until bowels act freely, then three times a day for five to seven days. For treating common Malaria, see directions on circular.

The directions for use appearing in the circular packaged with this preparation are:

If constipated at the time it will be found beneficial to take dose (one tablespoonful for adults, children in proportion) every two hours until bowels act freely, then as a tonic at least four times a day for five to seven days.

As thus compounded and when taken as directed for the treatment of malaria (a tablespoonful four times a day) "Nash's C. & L. Malaria Chill Tonic and Laxative" will provide the user with approximately 8.9 grains of the quinidine alkaloids and 4.4 grains of the cinchonine alkaloids.

It is the consensus of competent medical and scientific opinion that the crystallizable cinchona alkaloids (quinine, quinidine, cinchonine, and cinchonidine), separately or in combination, are effective drugs for use in the prevention and cure of malaria, that the optimum dose for adults of any one alkaloid or any combination of the alkaloids is 30 grains a day, but that a minimum dose of 20 grains a day, of any one alkaloid or any combination of the alkaloids, for adults, is recognized as an effective therapeutic dose in the treatment of malaria;

Findings

36 F. T. C.

that the minimum daily dose for children of any one alkaloid or any combination of the alkaloids in the treatment of malaria is:

	<i>Grains</i>
Under 1 year.....	2½
1 to 2 years.....	5
3 to 4 years.....	7½
5 to 6 years.....	10
7 to 8 years.....	12½
9 to 10 years.....	15
11 to 12 years.....	17½
13 years and over.....	20

It is also the consensus of competent medical and scientific opinion that in order for a preparation containing one or more of the cinchona alkaloids to be considered a competent and effective treatment for malaria, such preparation, when taken as directed, should provide an adult daily, over a period of time of not less than 7 consecutive days, with at least 20 grains of its alkaloid contents.

Respondents' preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" as now constituted is an anti-malarial preparation and laxative, but when taken in accordance with the directions for use appearing on its label and in its labeling will not provide an adult daily with at least 20 grains of the alkaloid content, nor will it provide a child daily with the minimum amount of alkaloid content called for in the table for children just hereinabove set forth. Therefore, this preparation is not a competent or effective treatment for the cure of malaria.

Respondents' preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" is not a cure and remedy nor does it constitute an effective or competent treatment for liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, or various other conditions or diseases of the human body. It is not an unsurpassed remedy for or preventive of malaria. It will not clean out the system. It will not restore the normal functioning of the bowels. It will not add red corpuscles to the blood. It will not restore vigor or vitality. It will not prevent or cure colds. It is not a new discovery. It is not a safe medicine for the baby or infant. It is not endorsed by nurses, physicians, school teachers, or health officials throughout the southern part of the United States. Nine out of ten persons residing in the southern part of the United States do not have malaria.

PAR. 6. The disorders, conditions, and symptoms such as biliousness, constipation, nervousness, liver disorders, chronic colds, sour stomach, gas on the stomach, upset stomach, backache, dizziness, bad breath, indigestion, coated tongue, loss of weight, trembling all over, lack of energy, pep, or ambition; aching in every bone of the body; or

The condition of feeling blue, depressed, worn out, completely run down, tired, or restless; or

The condition of being irritable or unduly superstitious; or

The condition of having bad dreams, nightmares, foolish fears and dreads, pimples, boils, or unsightly blotches, a bad taste in the mouth, a sallow, yellow complexion, floating specks before the eyes, shaking hands and knees, an improper or abnormal functioning of the kidneys, occasional or habitual dull or sick headaches; or

The fact that a child is unruly, irritable, restless, or sluggish, are not symptoms or manifestations of malaria. The existence of one or more of such symptoms, disorders, or conditions, as hereinabove listed, does not indicate that the person, individual, or child, as the case may be, is suffering from malaria.

Ague, chills, third-day chills, fever, swamp chills, or hot and cold flashes may, and often do, accompany an attack of malaria, and they are recognized as symptoms of malaria. When such symptoms, conditions, or disorders are caused by malaria, respondents' medicinal preparation "Nash's C. L. Malaria Chill Tonic and Laxative" would be a competent and effective treatment therefor if used in the proper therapeutic doses over a sufficient period of time, but if taken according to the directions for use now appearing on the label and in the labeling, respondents' preparation is not a competent or effective treatment for such symptoms, disorders, or conditions.

Respondents' preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" is a competent treatment for the temporary relief of biliousness and constipation: *Provided, however*, A proper recommendation of dosage for the treatment of such conditions is specifically given in the directions for use. But due to the presence of the cathartic drugs phenolphthalein and F. E. Mandrake, the preparation is habit-forming if taken over a long period of time and may be harmful if taken by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use of the drugs, quinidine, cinchonine, and cinchonidine, separately or in various combinations of one with the other, in proper daily therapeutic doses over a long period of time is one of several ways of preventing the development of malaria. The use of respondents' preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" in the proper daily therapeutic dosage over a long period of time would be a competent and effective treatment for the prevention of malaria, but due to the presence of the cathartic drugs phenolphthalein and F. E. Mandrake, a prolonged administration of this preparation is likely to be harmful and habit-forming, as hereinabove set forth.

Order

36 F. T. C.

This preparation, therefore, should not be advertised or sold for the prevention of malaria.

PAR. 8. The use by the respondents of the foregoing statements, representations and advertisements, and others of similar import, disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and that the preparation "Nash's C. & L. Malaria Chill Tonic and Laxative" will accomplish all of the results claimed for it by the respondents, and that it is harmless and safe to use; and the tendency and capacity to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the aforesaid medicinal preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually, and trading as Nash Bros. Drug 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' medicinal preparation designated "Nash's C & L Malaria Chill Tonic and Laxative," or any other preparation or combination of preparations of substantially similar composition or possessing substantially similar properties, by whatever name

or names designated, do forthwith cease and desist from directly or indirectly—

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

A. That respondents' preparation—

(1) is a cure or remedy or constitutes an effective or competent treatment for ague, chills, third-day chills, fever, swamp chills, hot or cold flashes, or malaria, unless the prescribed dosage for adults and for children provides daily for 7 consecutive days the minimum amount of the alkaloid or alkaloids recommended, approved and recognized by scientific and medical authority as essential and necessary to constitute a competent or effective dosage;

(2) is a cure or remedy or constitutes an effective or competent treatment for liver trouble, dyspepsia, backache, nervousness, or stomach trouble;

(3) is a cure or remedy for headache, or has any therapeutic value in the treatment of such condition in excess of affording temporary relief by an evacuation of the bowels in those cases where such condition is due to constipation;

(4) is a cure or remedy for biliousness or constipation, or has any therapeutic value in the treatment of such conditions other than to afford temporary relief by an evacuation of the bowels;

(5) is an unsurpassed remedy for malaria or a new discovery, or is endorsed by nurses, physicians, school teachers, or health officials;

(6) is a safe medicine for infants or babies;

(7) will clean out the system, restore the normal functioning of the bowels, restore vigor or vitality, add red corpuscles to the blood, or will prevent or cure colds; or

(8) will prevent malaria.

B. That 9 out of 10 persons residing in the southern part of the United States have malaria.

C. That the existence of the disorders or conditions such as biliousness, constipation, nervousness, liver disorders, chronic colds, sour stomach, gas on the stomach, upset stomach, backache, dizziness, bad breath, indigestion, coated tongue, loss of weight, trembling all over, lack of energy, pep, or ambition, aching in every bone of the body; or the condition of feeling blue, depressed, worn out, completely run down, tired, or restless; or the condition of being irritable or unduly superstitious; or the condition of having bad dreams, nightmares, foolish fears and dreads, pimples, boils, or unsightly blotches, a bad taste in the mouth, a sallow yellow complexion, floating specks before

Order

36 F. T. C.

the eyes, shaking hands and knees, an improper or abnormal functioning of the kidneys, occasional or habitual dull or sick headaches; or the fact that a child is unruly, irritable, restless or sluggish, is symptomatic of or indicates that the individual or child is suffering from malaria.

2. Disseminating or causing to be disseminated any advertisement, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to reveal that said preparation should not be used by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis; provided, however, that such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

3. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any representation prohibited in paragraphs 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

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

Syllabus

IN THE MATTER OF

PHIL HOWE, DAVID A. HOWE, AND JOANNE B. HOWE,
TRADING AS HOWE AND COMPANY

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

Docket 4729. Complaint, Mar. 16, 1942—Decision, May 6, 1943

Where an individual, later associated with two members of his family, engaged in the interstate sale and distribution of cosmetic preparations purchased in bulk and packaged and sold under his name; by means of circulars, leaflets, counter-display cards and other advertising material, as well as labels attached to containers of said products—

- (a) Falsely represented, through use of such descriptive designations as "Cleansing Cream, Carrot Type," "Creme Nocturne, Avocado Type," and "Hand Lotion, Honey and Almond Type," that products in question contained, respectively, the juice, extract, or other content of carrots, avocados, and honey and almonds; and through designation "Finishing Cream, Turtle Oil Type" that product in question contained turtle oil;
- (b) Falsely represented that his "Cleansing Cream, Carrot Type" induced natural lubrication of the skin, that his "Creme Nocturne, Tissue Type," enriched the skin tissues, and corrected skin dryness, and that his "Creme Nocturne, Avocado Type" nourished the skin with vitamins, stimulated dormant muscles, and replenished tissues;
- (c) Represented, through inclusion of word "Hollywood" in brand names featured in advertising and on labels on various items, that one of his leading lines was made in Hollywood, Calif.—cosmetics of which, associated by a substantial portion of the purchasing public with the motion-picture industry, are preferred by it over those made elsewhere—and through inclusion on labels of legend "Favorite of the Stars," that preparations in question were recognized by leading motion-picture actresses as possessing superior cosmetic properties;

The facts being that only 3 of the 20 items sold by him under name "Hollywood" and representing a little over half of his total purchases were obtained from sources in Hollywood; said misrepresentation or implication was not corrected by the words "Seattle, Distributors," in small and inconspicuous type also appearing on labels, from which prospective purchaser could reasonably conclude that products were made in Hollywood and distributed by a Seattle concern; and preparations in question were not recognized by leading motion-picture actresses as possessing superior cosmetic properties;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties and origin of said products, thereby causing substantial purchase thereof, as a result of such mistaken belief;

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Complaint

36 F. T. C.

Mr. Edward Starin, of Seattle, Wash., and *Mr. Gail B. Selig*, of Los Angeles, Calif., 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 Phil Howe, an individual, trading as Howe & 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, Phil Howe, is an individual, trading as Howe & Co., with his office and principal place of business located at 1535 Eleventh Avenue, Seattle, Wash., with branch offices located in New York, N. Y., and Toronto, Canada. The respondent, is now, and for more than 2 years last past, has been engaged as a wholesale dealer in the sale and distribution of cosmetics. Respondent causes said preparations when sold to be transported from his aforesaid place of business in the States of Washington and New York and from Toronto, Canada, to retail dealers and 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 cosmetics in commerce among and between the various States of the United States and in the District of Columbia.

¹ Complaint was amended by an order of the Commission dated April 20, 1943, as follows:

It appearing to the Commission that since the issuance of the complaint herein the respondent Phil Howe has entered into a copartnership with two other individuals, to wit, his son, David A. Howe, and his daughter, Joanne B. Howe, and that the business formerly operated by Phil Howe as an individual under the name Howe & Company is now operated by said copartnership under the same name.

And it further appearing that at the beginning of the hearings herein before the trial examiner a stipulation was entered into upon the record between the attorney for the Commission and one of the attorneys for the copartnership providing that the said David A. Howe and Joanne B. Howe be joined as respondents in this proceeding along with respondent Phil Howe, and that, pursuant to such stipulation, the hearings then proceeded as to all three of said parties.

It is therefore ordered, That the complaint herein be, and it hereby is, amended by joining as respondents therein the said David A. Howe and Joanne B. Howe along with respondent Phil Howe, and that this proceeding shall hereafter be styled "In the Matter of Phil Howe, David A. Howe, and Joanne B. Howe, copartners trading as Howe & Co."

It is further ordered, That the testimony and other evidence introduced in this proceeding be considered as relating to all of said parties in the same manner and to the same effect as though this order has been entered prior to the taking of such testimony and other evidence.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said products in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by display signs, folders, circulars, packing slips, labels, and other advertising matter are the following:

CREME MODERNE

Penetrates, cleanses and leaves the skin in perfect condition.

CLEANSING CREAM—CARROT TYPE

A dry skin cleanser which blends with the skin's own oil, inducing lubrication.

CREME NOCTURNE—(TISSUE TYPE)

Rich and nourishing. Corrects the dryness of the skin * * * Formerly called Tissue Cream.

CREME NOCTURNE—AVOCADO TYPE

For the undernourished skin lacking in Vitamins, this effective night cream stimulates dormant muscles and replenishes waste tissues.

HOLLYWOOD HAND LOTION—HONEY AND ALMOND TYPE

A Sensational Presentation of HOLLYWOOD'S NEW BOUDOIR FACE POWDER.

Howe's HOLLYWOOD

favorite of the Stars

CLEANSING CREAM

(or other named product)

Hollywood Cosmetics

Created by Howe Company.

PAR. 3. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents and has represented directly and by implication, that the preparations advertised and designated as "Cleansing Cream—Carrot Type," "Creme Nocturne—Avocado Type," "Hand

Complaint

36 F. T. C.

Lotion—Honey and Almond Type,” and “Finishing Cream—Turtle Oil Type,” contain respectively the juice, extract, or some part of carrots, avocados, honey and almonds, and turtle oil, and have the characteristic properties thereof; that the preparation designated as “Creme Moderne” penetrates the skin; that the preparation “Cleansing Cream—Carrot Type” blends with the skin’s own oil and induces natural lubrication; that the preparation “Creme Nocturne—Tissue Type” will nourish the skin and tissues and will correct skin and tissue dryness; that the preparation “Creme Nocturne—Avocado Type” will nourish the skin with vitamins and stimulate dormant or inactive muscles and rebuild tissues; that the preparations designated “Hollywood Cosmetics, Favorite of the Stars” originated in and are made in Hollywood, Calif.; that said preparations are related to, or associated with, Hollywood, Calif., or with the motion-picture colony, or studios located at that place and are recognized by leading motion-picture actors or actresses as possessing superior cosmetic properties; and that the various cosmetic preparations designated as “Hollywood Cosmetics” were originated and are manufactured, created, or compounded by Howe & Co.

PAR. 4. The foregoing statements and representations disseminated as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, the products advertised and sold by the respondent as “Cleansing Cream—Carrot Type,” “Creme Nocturne—Avocado Type,” “Hand Lotion—Honey and Almond Type,” and “Finishing Cream—Turtle Oil Type” do not contain respectively the juice, extract, or any part of carrots, avocados, honey and almonds, and turtle oil, and do not have the characteristic properties thereof. The preparation sold as “Creme Moderne” will not penetrate the skin. The so-called “Cleansing Cream—Carrot Type” does not blend with the skin’s own oil, or induce natural lubrication. The preparation designated as “Creme Nocturne—Tissue Type” contains no ingredients which will nourish the skin or tissues or correct or permanently eliminate a dry condition of the skin. The preparation advertised as “Creme Nocturne—Avocado Type” will not nourish the skin with vitamins or stimulate dormant muscles or rebuild tissues of the skin. Respondent’s preparations designated as “Hollywood Cosmetics, Favorite of the Stars” were not and are not made or compounded by the respondent in Hollywood, Calif. The said preparations were not and are not now related to or associated with Hollywood, Calif., or with the motion-picture colony or studios located at that place. Said preparations are not now and have not been recognized by leading motion-picture actors or actresses as possessing superior cosmetic properties nor are they the favorite cosmetics of the motion-picture

stars. The various cosmetic preparations designated as "Hollywood Cosmetics" were not originated or manufactured, created or compounded by Howe & Co. The said preparations are purchased by the respondent in their finished form from manufacturers located in Seattle, Wash.; New York, N. Y.; and other places outside of the State of California. Said preparations are packed and sold by the respondent under his own name or brands.

PAR. 5. Cosmetics and toilet preparations made in Hollywood, Calif., have for many years enjoyed widespread popularity and good will, and have been very much in demand among the trade and consuming public throughout the United States. Many persons believe that cosmetics made in Hollywood, Calif., are superior to those made elsewhere because of the fact that it is the seat of the motion-picture industry of the United States.

PAR. 6. The use of the words "Hollywood Cosmetics, Favorite of the Stars," on the labels of the containers in which said products are packed, and the distribution by the respondent of display signs and circulars containing the legend "Hollywood Cosmetics, Favorite of Movie Stars," distributed to and placed in the hands of retail dealers by the respondent, place in the hands of uninformed or unscrupulous retailers a means or instrumentality whereby such dealers may mislead the purchasing public into the erroneous and mistaken belief that respondent's cosmetics sold by such dealers are produced or manufactured in Hollywood, Calif.; that they have the approval of the motion-picture colony in Hollywood and are of such a pure quality as to be highly considered and used by the most popular screen actresses.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements as aforesaid has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true and do induce the purchasing public to purchase substantial quantities of respondent's products as the result of such belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 16, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Phil Howe, an individual, trading as Howe & Co., charging him with

Findings

36 F. T. C.

the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent, Phil Howe's answer to the complaint, hearings were held before a trial examiner of the Commission theretofore duly designated by it, at the beginning of which hearings a stipulation was entered into between the attorney for the Commission and one of the attorneys for the respondents to the effect that subsequent to the institution of the proceeding respondent Phil Howe had entered into a copartnership with his son, David A. Howe, and his daughter, Joanne B. Howe, under the name Howe & Co.; and it was further stipulated that David A. Howe and Joanne B. Howe be joined as respondents in the proceeding along with respondent, Phil Howe (an order amending the complaint in accordance with the stipulation being subsequently entered by the Commission). Thereupon, the hearings continued as to all of the respondents, and testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission and in opposition thereto by the attorneys for the respondents, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer of respondent Phil Howe, 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, Phil Howe, David A. Howe, and Joanne B. Howe, are copartners, trading as Howe & Co., with their office and principal place of business located at 1535 Eleventh Avenue, Seattle, Wash. They are now, and respondent Phil Howe for some time last past has been, engaged in the sale and distribution of cosmetic preparations.

PAR. 2. Respondents cause and have caused their preparations, when sold, to be transported from their place of business in the State of Washington 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 cosmetic preparations in commerce among and between the various States of the United States and in the District of Columbia.

685

Findings

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his cosmetics, respondent Phil Howe has made certain representations with respect thereto, such representations having been made by means of circulars, leaflets, counter display cards and other advertising material, as well as on the labels attached to the containers in which such respondent's products were packaged, displayed, and sold. Among the representations made by such respondent were the following:

CREME MODERNE * * *

Penetrates, cleanses and leaves the skin in perfect condition. * * *

CLEANSING CREAM—CARROT TYPE * * *

A dry skin cleanser which blends with the skin's own oil, inducing lubrication. * * *

CREME NOCTURNE—(TISSUE TYPE) * * *

Rich and nourishing. Corrects the dryness of the skin. * * * Formerly called Tissue Cream.

CREME NOCTURNE—AVOCADO TYPE * * *

For the undernourished skin lacking in Vitamins, this effective night cream stimulates dormant muscles and replenishes waste tissues.

HOLLYWOOD HAND LOTION—HONEY AND ALMOND TYPE * * *

FINISHING CREAM—TURTLE OIL TYPE

Through the use of these statements and representations and others of a similar nature, respondent, Phil Howe, represented that the preparations designated as "Cleansing Cream, Carrot Type," "Creme Nocturne, Avocado Type," and "Hand Lotion, Honey and Almond Type" contained, respectively, the juice, extract or other content of carrots, avocados, and honey and almonds, and that the preparation designated as "Finishing Cream, Turtle Oil Type" contained turtle oil; that the preparation designated "Creme Moderne" penetrated the skin; that the preparation "Cleansing Cream, Carrot Type" induced natural lubrication of the skin; that the preparation "Creme Nocturne, Tissue Type" nourished the skin and tissues and corrected skin dryness; and that the preparation "Creme Nocturne, Avocado Type" nourished the skin with vitamins, stimulated dormant or inactive muscles, and rebuilt tissues.

PAR. 4. The Commission finds that these representations were misleading and deceptive. The preparations designated "Cleansing Cream, Carrot Type," "Creme Nocturne, Avocado Type," and "Hand Lotion, Honey and Almond Type" did not contain, respectively, the juice, extract or other content of carrots, avocados, and honey and almonds, and the preparation designated "Finishing Cream, Turtle Oil Type" did not contain turtle oil. The preparation designated "Creme Moderne" was incapable of penetrating the skin. The prepa-

Findings

36 F. T. C

ration designated "Cleansing Cream, Carrot Type," did not induce natural lubrication of the skin. The preparation designated "Creme Nocturne, Tissue Type" was incapable of supplying any nourishment to the skin or tissues, or of correcting skin dryness. The preparation "Creme Nocturne, Avocado Type" did not supply any vitamins or other nourishment to the skin, stimulate dormant or inactive muscles, or rebuild tissues.

The evidence shows that after the Commission's investigation had been instituted and the misleading nature of these representations called to respondent Phil Howe's attention, he discontinued the use of the representations.

PAR. 5. One of respondents' principal lines or brands of cosmetics is designated by them as "Howe's Hollywood" cosmetics, and the word "Hollywood" is featured both in respondents' advertising of these preparations and in the labels used for the various items, as: "Howe's Hollywood Creme Nocturne," "Howe's Hollywood Creme Moderne," "Howe's Hollywood Finishing Cream," etc. In connection with the brand name there frequently appears also on the labels the legend, "favorite of the Stars." In small type at the bottom of the labels there appear also the words, "Howe Co. (or other form of the trade name), Seattle, Distributors." The complaint alleges that the trade name "Hollywood" and the legend "favorite of the Stars" are misleading to the public as representing or implying that respondents' cosmetics are manufactured in Hollywood, Calif., the seat of the motion-picture industry, and that the preparations are recognized by leading motion-picture actresses as possessing superior cosmetic properties.

On these points a substantial volume of testimony was introduced, both on behalf of the Commission and on behalf of the respondents. A number of witnesses testified that in their opinion the word "Hollywood" has no particular significance as applied to cosmetics, and that the word is not understood by the purchasing public as implying that the products to which the word is applied are manufactured in Hollywood, Calif. On the other hand, a number of witnesses, including both persons in the trade and members of the consuming public, testified that the word "Hollywood," when used to designate cosmetic preparations, is associated by many persons with the motion-picture industry, and is understood by such persons as indicating that the products so designated are manufactured in Hollywood. The evidence further indicates that while only a small percentage (probably about 3 percent) of the cosmetic preparations sold in the United States are manufactured in Hollywood, Calif., the name is regarded generally by those manufacturers located in Hollywood as a substantial business asset.

Respondents do not manufacture any of their products, but purchase them in bulk from various cosmetic manufacturers and then package, and sell them under their own name. Of the some 20 items sold by respondents under the name "Hollywood," only 3 are obtained from sources in Hollywood, Calif, these three being the face powder, the foundation and mask, and the hand cream. During the first 6 months of 1942, the amount paid by respondents to Hollywood manufacturers for these 3 items was approximately 52.9 percent of the total amount expended by respondents for cosmetics sold by them under the "Hollywood" brand name. The other 17 items sold under this name, constituting approximately 47.1 percent of the total purchases, were obtained by respondents from various manufacturers located at different points in the United States, including Seattle, Wash.; New York City; and Newark, N. J.

After considering all of the evidence offered on this point, the Commission is of the opinion and finds that the word "Hollywood," when used to designate cosmetic preparations, is associated by a substantial portion of the purchasing public with the motion-picture industry and is understood by such members of the public as indicating that the cosmetics so designated were manufactured in Hollywood, Calif. In the case of respondents' preparations this impression is further strengthened as a result of the use of the legend "favorite of the Stars" in connection with the word "Hollywood." The evidence further shows that there is a preference on the part of a substantial portion of the public for cosmetics having their origin in Hollywood over those manufactured elsewhere.

Respondents insist that the words "Howe Co., Seattle, Distributors," which appear on their labels, are sufficient to apprise prospective purchasers of the fact that respondents' business is located in Seattle, Wash., and to remove any erroneous impression which might otherwise be conveyed through the use of the name "Hollywood." These words, however, are printed in small and inconspicuous type, and would probably escape the notice of the average purchaser. Moreover, due to the inclusion of the word "Distributors," prospective purchasers could reasonably conclude that the products are manufactured in Hollywood and distributed by a Seattle concern. Finally, the Commission is of the opinion that the word "Seattle," in the circumstances, is inconsistent with and contradictory of the word "Hollywood" and is therefore incapable of correcting the erroneous impression created by the latter word. Those members of the public who understand the word "Hollywood" as indicating the place of origin of respondents' products could only be confused by the addition of the word "Seattle." Such persons could believe one, but not both, of the representations.

The Commission therefore finds that the use by respondents of the word "Hollywood" to designate or describe any of their products which

Order

36 F. T. C.

is not in fact manufactured in Hollywood, Calif., is misleading and deceptive to a substantial portion of the purchasing public. The Commission finds further that respondents' preparations are not recognized by leading motion-picture actresses as possessing superior cosmetic properties. The legend "favorite of the Stars" is therefore misleading and deceptive.

PAR. 6. The use by respondents of the misleading and deceptive representations herein set forth has had and has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties and origin of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous 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 respondent, Phil Howe, 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 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, Phil Howe, David A. Howe, and Joanne B. Howe, individually and trading as Howe & Co., or trading under any other name, and their agents, representatives, and other employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Hollywood," or any abbreviation or simulation thereof, to designate or describe any product which is not in fact manufactured in Hollywood, Calif.; or otherwise representing, directly or by implication, that any product is manufactured in Hollywood, Calif., when such is not the fact.

2. Using the words "favorite of the Stars," or any other words of similar import, to designate or describe respondents' product; or

otherwise representing, directly or by implication, that respondents' products are recognized by leading motion-picture actresses as possessing superior cosmetic properties.

It is further ordered, That respondent, Phil Howe, individually and trading as Howe & Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

3. Using the word "Carrot" or the words "Carrot Type," or any other word or words of similar import, to designate or describe any product which does not in fact contain the juice, extract, or other content of carrots.

4. Using the word "Avocado" or the words "Avocado Type," or any other word or words of similar import, to designate or describe any product which does not in fact contain the juice, extract, or other content of avocados.

5. Using the words "Honey and Almond" or "Honey and Almond Type," or any other words of similar import, to designate or describe any product which does not in fact contain honey and the extract or other content of almonds.

6. Using the words "Turtle Oil" or "Turtle Oil Type," or any other words of similar import, to designate or describe any product which does not in fact contain turtle oil.

7. Representing, directly or by implication, that respondents' product designated "Creme Moderne" penetrates the skin.

8. Representing, directly or by implication, that respondents' product formerly designated "Cleansing Cream, Carrot Type" induces natural lubrication of the skin.

9. Representing, directly or by implication, that respondents' product formerly designated "Creme Nocturne, Tissue Type" nourishes the skin or tissues, or corrects skin dryness.

10. Representing, directly or by implication, that respondents' product formerly designated "Creme Nocturne, Avocado Type" supplies vitamins or other nourishment to the skin, stimulates dormant or inactive muscles, or rebuilds tissues.

11. Representing, directly or by implication, that any of respondents' products contains ingredients which it does not in fact contain or that any of such products possesses properties which it does not in fact possess.

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
MCNEIL DRUG COMPANY, INC., AND ASSOCIATED
ADVERTISING AGENCY, INC.

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

Docket 4923. Complaint, Mar. 4, 1943—Decision, May 6, 1943

Where a corporation, engaged in the competitive interstate sale and distribution of a medicinal preparation which it variously designated as "Magic Remedy," "McNeil's Magic Remedy," and "McNeil's Magic Remedy Brand"; and the advertising agency which prepared and aided in the preparation and circulation of the advertising matter used in connection therewith; by means of statements in newspapers and periodicals, in circulars, leaflets, letterheads, and other printed matter, and by radio broadcasts, directly and by implication—

- (a) Represented that said "Magic Remedy" was a remedy and effective treatment for rheumatism, neuritis, lumbago, gout, glandular swellings, backache and pains associated therewith, and for pains in the bones, muscles, and legs;
- (b) Represented that it would straighten limbs drawn out of shape by rheumatism and accomplish beneficial results in cases of rheumatism not possible through the use of other medicinal preparations and through treatment by doctors; and
- (c) Represented that it stimulated the entire glandular system, including the kidneys and liver; was an effective blood purifier, would remove uric acid and other impurities from the blood, and make thin blood rich and healthy; and acted as a tonic, built up resistance to weather conditions, strength and vigor, drove out disease, and assured good health;

The facts being that, while it had a mild analgesic action and would reduce the perception of minor pains associated with conditions above set forth, it would not significantly influence the more severe pains arising therefrom; and it did not have the qualities, and would not accomplish the results otherwise claimed for it, as above set forth; and

- (d) Failed to reveal facts which were material in the light of aforesaid representations, or with respect to the consequences which might result from the use thereof under prescribed or usual conditions, in that as a laxative it was potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis, and in that, by virtue of its potassium iodide content, it should not be used by those suffering from goiter, or either active or arrested tuberculosis;
- With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby causing its purchase thereof; 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 and injury of the public and competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Mr. R. P. Bellinger for the Commission.

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act the Federal Trade Commission, having reason to believe that McNeil Drug Co., Inc., a corporation, and Associated Advertising Agency, 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, McNeil Drug Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business in Jacksonville, Fla.

The said respondent is now and for many years last past has been engaged in the sale and distribution in commerce of a certain medicinal preparation variously designated as "Magic Remedy," "McNeil's Magic Remedy," and "McNeil's Magic Remedy Brand."

In the course and conduct of its said business, respondent, McNeil Drug Co., Inc., causes and has caused its said preparation when sold to be transported from its said place of business in the State of Florida to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 2. Respondent, Associated Advertising Agency, Inc., is a Florida corporation, with its office and principal place of business in Jacksonville, Fla. This respondent is an advertising agency, engaged in preparing, editing, disseminating and causing to be published advertising material for its patrons, and as such is the advertising representative of the respondent, McNeil Drug Co., Inc., and prepares and has prepared and aids and has aided in the preparation and circulation of the advertising matter used in the manner hereinafter set forth, in connection with the sale and distribution in commerce of the said medicinal preparation. The said respondents above named act and have acted in full cooperation with one another in the performance of the acts and practices herein alleged.

PAR. 3. In the course and conduct of its aforesaid business, respondent, McNeil Drug Co., Inc., 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

Complaint

36 F. T. C.

distribution in commerce between and among the various States of the United States and in the District of Columbia of medicinal preparations designed and compounded for use in the treatment of the diseases, maladies, and conditions for which its said preparation is recommended by respondents.

PAR. 4. In furtherance of the sale and distribution of the above-designated medicinal preparation, and for the purpose of inducing the purchase of said preparation by the purchasing public, respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements by United States mail, by insertions in newspapers and periodicals having general circulation, and also in circulars, leaflets, letterheads, and other printed matter, all of which are distributed in commerce between and among the various States of the United States and in the District of Columbia, and by 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 States from which said broadcasts originate, and by other means, 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:

McNeill's Magic Remedy is all that its name implies—a perfect remedy for rheumatism, neuritis, lumbago, gout, glandular swellings and pains in the bones and muscles. It stimulates the entire glandular system, embracing the kidneys and liver. It is now recognized everywhere as the most trustworthy Blood Purifier.

I suffered from Rheumatism for three years but am thankful to say that McNeill's Magic Remedy cured me.

For 20 years I had Rheumatism and after taking three small bottles of McNeill's Remedy my pains have almost gone.

Why endure the misery and discomfort of muscular aches and pains when you can get blessed relief with McNeill's Magic Remedy? Try this fine Old-Fashioned remedy. A favorite with rheumatism, neuritis and lumbago sufferers since 1901.

There is no need to suffer the misery of backaches and leg pains caused by rheumatism, lumbago, and neuritis.

Be prepared for the muscular aches and pains that often come at this time of the year. Build up your resistance with McNeill's Magic Remedy, a favorite blood purifier and tonic since 1901. Gives blessed relief from rheumatism and neuritis pains.

McNeill's Magic Remedy has done for me what two doctors, one specialist and four or five different rheumatic remedies failed to do. I have suffered for eighteen months more than I can tell you. I used three bottles and a half of your remedy and am now practically free from pain.

I was laid up with rheumatism; pains in my legs, and the leg drawn up so I couldn't walk. Had a doctor and took his medicine without benefit. A relative

Complaint

advised me to try McNeil's Magic Remedy. I took one bottle and my pain all left. I continued the treatment and after taking four bottles, I was as well as ever, the leg straight and I was working as usual.

Enjoy Life again—Take MCNEIL'S MAGIC REMEDY For Pleasant Relief From RHEUMATISM and NEURITIS Through Blood Purification.

Gives relief by helping nature expel blood impurities.

McNeil's Magic Remedy eradicates uric acid and other impurities from the blood.

McNeil's Magic Remedy, a recognized remedy for rheumatic and neuritis sufferers and a perfect blood purifier. Makes thin blood rich and healthy. Builds strength and vigor. Always effective. Why suffer?

* * * builds up and strengthens the whole system while it drives out disease.

Take McNeil's MAGIC REMEDY and Enjoy Good Health.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent and have represented, directly and by implication, that said medicinal preparation "McNeil's Magic Remedy" is a cure and remedy for rheumatism, neuritis, lumbago, gout, glandular swellings, backache, and the pains associated with such conditions and pains in the bones, muscles, and legs, and constitutes a competent and effective treatment for such conditions; that it will straighten limbs drawn out of shape because of rheumatism and will accomplish beneficial results in cases of rheumatism not possible through the use of other medicinal preparations and through treatments administered by members of the medical profession; that it stimulates the entire glandular system, including the kidneys and liver; that said product is an effective blood purifier, will remove uric acid and other impurities from the blood and makes thin blood rich and healthy; that it acts as a tonic, builds up resistance to weather conditions, builds strength and vigor, drives out disease, and assures good health.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, said preparation is not a cure or remedy for rheumatism, neuritis, lumbago, gout, glandular swellings, backache, pains in the bones, muscles, and legs and does not constitute a competent and effective treatment therefor. While said preparation has a mild analgesic action and will reduce the perception of minor pains associated with the aforesaid conditions, it will not significantly influence the more severe pains arising out of any of said conditions. Its use will not straighten out limbs drawn out of shape by rheumatism and will not accomplish beneficial results in cases of rheumatism which are possible through the use of other medicinal preparations or by reason of treatment by members of the medical profession. Said preparation will not stimulate the entire

Complaint

36 F. T. C.

glandular system and will have no significant stimulating effect upon the kidneys and liver. Said product will not purify the blood, will not remove uric acid and other impurities from the blood and will not make thin blood rich and healthy. It has no significant value as a tonic, will not build up resistance to weather conditions, will not build strength and vigor nor drive out disease and its use will not assure good health.

The use by the respondents of the word "Magic" as a part of the trade names, "Magic Remedy," "McNeil's Magic Remedy," and "McNeil's Magic Remedy Brand," and otherwise, is misleading and deceptive in that it serves as a representation, in itself, that said preparation possesses unusual and extraordinary properties, which is contrary to the fact.

PAR. 7. The 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis. Furthermore, said preparation contains the drug potassium iodide and should not be used by persons suffering from goitre or either active or arrested tuberculosis.

PAR. 8. The use by respondents of the aforesaid false and misleading and deceptive statements and representations in the manner 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 the said statements, representations, and advertisements are and were true, and because of such erroneous and mistaken belief, to purchase substantial quantities of said preparation. As a result thereof trade has been diverted unfairly to the respondent, McNeil Drug Co., Inc., from its competitors in commerce. In consequence thereof injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and to competitors of the respondent, McNeil Drug Co., Inc., and constitute unfair methods 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 4th day of March 1943, issued and subsequently served its complaint in this proceeding upon the respondents, McNeil Drug Co., Inc., a corporation, and Associated Advertising Agency, Inc., a corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 31st day of March 1943 the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts, except that the respondents deny that the use of the trade names "Magic Remedy," McNeil's Magic Remedy," and McNeil's Magic Remedy Brand" and the use of the word "Magic" otherwise, represent that their preparation possesses magical properties and constitutes a magic treatment; and respondents further deny that such usage of said trade names and the word "Magic" is misleading or deceptive. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and respondents' answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, McNeil Drug Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business in Jacksonville, Fla.

The said respondent is now, and for many years last past has been, engaged in the sale and distribution in commerce of a certain medicinal preparation variously designated as "Magic Remedy," "McNeil's Magic Remedy," and "McNeil's Magic Remedy Brand." In the course and conduct of its said business, respondent, McNeil Drug Co., Inc., causes and has caused its said preparation, when sold, to be transported from its said place of business in the State of Florida to purchasers thereof located in various other States of the United States and in the District of Columbia. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, Associated Advertising Agency, Inc., is a Florida corporation, with its office and principal place of business in Jacksonville, Fla. This respondent is an advertising agency, engaged in preparing, editing, disseminating, and causing to be published, advertising material for its patrons and, as such, is the advertising representative of the respondent, McNeil Drug Co., Inc., and prepares and has prepared, and aids and has aided in the preparation and circulation of, the advertising matter used in the manner hereinafter set forth, in connection with the sale and distribution in commerce of the said medicinal preparation. The said respondents above-named act and have acted in full cooperation with one another in the performance of the acts and practices herein set forth.

PAR. 3. In the course and conduct of its aforesaid business, respondent, McNeil Drug Co., Inc., 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 in commerce between and among the various States of the United States and in the District of Columbia of medicinal preparations designed and compounded for use in the treatment of the diseases, maladies, and conditions for which its said preparation is recommended by respondents.

PAR. 4. In furtherance of the sale and distribution of the above-designated medicinal preparation, and for the purpose of inducing the purchase of said preparation by the purchasing public, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements by United States mail, by insertions in newspapers and periodicals having general circulation, and also in circulars, leaflets, letterheads, and other printed matter, all of which are distributed in commerce between and among the various States of the United States and in the District of Columbia, and by 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 States from which said broadcasts originate, and by other means, 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:

McNeil's Magic Remedy is all that its name implies—a perfect remedy for rheumatism, neuritis, lumbago, gout, glandular swellings and pains in the bones and muscles. It stimulates the entire glandular system, embracing the kidneys and liver. It is now recognized everywhere as the most trustworthy Blood Purifier.

I suffered from Rheumatism for three years but am thankful to say that McNeil's Magic Remedy cured me.

For 20 years I had Rheumatism and after taking three small bottles of McNeil's Remedy my pains have almost gone.

Why endure the misery and discomfort of muscular aches and pains when you can get blessed relief with McNeil's Magic Remedy? Try this fine Old-Fashioned remedy. A favorite with rheumatism, neuritis and lumbago sufferers since 1901.

There is no need to suffer the misery of backaches and leg pains caused by rheumatism, lumbago and neuritis.

Be prepared for the muscular aches and pains that often come at this time of the year. Build up your resistance with McNeil's Magic Remedy, a favorite blood purifier and tonic since 1901. Gives blessed relief from rheumatism and neuritis pains.

McNeil's Magic Remedy has done for me what two doctors, one specialist and four or five different rheumatic remedies failed to do. I have suffered for eighteen months more than I can tell you. I used three bottles and a half of your remedy and am now practically free from pain.

I was laid up with rheumatism; pains in my legs, and the leg drawn up so I couldn't walk. Had a doctor and took his medicine without benefit. A relative advised me to try McNeil's Magic Remedy. I took one bottle and my pain all left. I continued the treatment and after taking four bottles, I was as well as ever, the leg straight and I was working as usual.

Enjoy Life again—Take MCNEIL'S MAGIC REMEDY For Pleasant Relief From RHEUMATISM and NEURITIS Through Blood Purification.

Gives relief by helping nature expel blood impurities.

McNeil's Magic Remedy eradicates uric acid and other impurities from the blood.

McNeil's Magic Remedy, a recognized remedy for rheumatic and neuritis sufferers and a perfect blood purifier. Makes thin blood rich and healthy. Builds strength and vigor. Always effective. Why suffer?

. . . builds up and strengthens the whole system while it drives out disease.

Take McNeil's MAGIC REMEDY and Enjoy Good Health.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent and have represented, directly and by implication, that said medicinal preparation "McNeil's Magic Remedy" is a cure and remedy for rheumatism, neuritis, lumbago, gout, glandular swellings, backache and the pains associated with such conditions, and pains in the bones, muscles, and legs, and constitutes a competent and effective treatment for such conditions; that it will straighten limbs drawn out of shape because of rheumatism and will accomplish beneficial results in cases of rheumatism not possible through the use of other medicinal preparations and through treatments administered by members of the medical profession; that it stimulates the entire glandular system, including the kidneys and liver; that said product is an effective blood purifier, will remove uric acid and other impurities from the blood, and make thin blood rich and healthy; that it acts as a

Findings

36 F. T. C.

tonic, builds up resistance to weather conditions, builds strength and vigor, drives out disease, and assures good health.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, said preparation is not a cure or remedy for rheumatism, neuritis, lumbago, gout, glandular swellings, backache, pains in the bones, muscles, and legs and does not constitute a competent and effective treatment therefor. While said preparation has a mild analgesic action and will reduce the perception of minor pains associated with the aforesaid conditions, it will not significantly influence the more severe pains arising out of any of said conditions. Its use will not straighten out limbs drawn out of shape by rheumatism and will not accomplish beneficial results in cases of rheumatism which are not possible through the use of other medicinal preparations or by reason of treatment by members of the medical profession. Said preparation will not stimulate the entire glandular system and will have no significant stimulating effect upon the kidneys and liver. Said product will not purify the blood, will not remove uric acid and other impurities from the blood, and will not make thin blood rich and healthy. It has no significant value as a tonic, will not build up resistance to weather conditions, will not build strength and vigor nor drive out disease, and its use will not assure good health.

PAR. 7. The 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis. Furthermore, said preparation contains the drug potassium iodide and should not be used by persons suffering from goiter or either active or arrested tuberculosis.

PAR. 8. The use by respondents of the aforesaid false and misleading and deceptive statements and representations in the manner 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 the said statements, representations, and advertisements are and were true, and causes members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said preparation. As a result thereof trade has been diverted unfairly to the respondent, McNeil Drug Co., Inc., from its competitors in commerce.

690.

Order

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer respondents admitted all the material allegations set forth in said complaint and waived all intervening procedure and further hearing as to said facts, except that respondents deny that the use of the word "Magic" is misleading or deceptive; 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, McNeil Drug Co., Inc., a corporation, and Associated Advertising Agency, Inc., a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of the medicinal preparation sold and distributed by respondent, McNeil Drug Co., Inc., which is variously described and designated as "Magic Remedy," "McNeil's Magic Remedy," or "McNeil's Magic Remedy Brand," or any other medicinal preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from:

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

a. That said preparation is a cure or remedy for rheumatism, neuritis, lumbago, gout, glandular swellings, backache, or pain in the bones, muscles, or legs; that it constitutes a competent or effective treatment for any of such diseases or conditions or that it has any therapeutic value in alleviating any pain associated with such conditions in excess of that afforded by a mild analgesic, which will reduce the perception of minor pains but not significantly influence the more severe pains arising out of any such conditions.

b. That said preparation has any value in straightening out limbs drawn out of shape by rheumatism.

Order

36 F. T. C.

c. That said preparation can accomplish any beneficial results which cannot be accomplished through the use of other medicinal preparations or by treatment by members of the medical profession.

d. That said preparation will stimulate the entire glandular system or have any significant stimulating effect upon the kidneys or liver.

e. That said preparation will purify the blood, remove uric acid or other impurities from the blood, or make the blood rich and healthy.

f. That said preparation has any significant value as a tonic or that the use of said preparation will build up resistance to weather conditions, build strength and vigor, drive out disease, or assure good health.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that respondents' preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis or that it should not be used by persons suffering from goiter or either active or arrested tuberculosis; provided, however, that if the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisements need contain only the cautionary statement, "CAUTION: Use only as directed."

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

BRISTOL-MYERS COMPANY

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

Docket 3645. Complaint, Oct. 15, 1940¹—Decision, May 7, 1943

Where a corporation engaged in interstate sale and distribution of its "Sal Hepatica" laxative, in statements in newspapers, periodicals, and radio broadcasts—

Falsely represented that its said preparation, among other things, would correct systemic acidity and restore the alkaline reserve of the body; constituted an effective treatment or cure for cold and the etiological factors thereof, and for rheumatism, arthritis and neuritis; would free the intestinal tract of poisons and toxins; was an effective treatment for upset stomach, indigestion, fatigue, nervousness, and headaches; and would enable one to stay clear-headed and alert, and be one's normal, healthy self;

The facts being that it would not correct systemic as distinguished from gastric acidity or restore the alkaline reserve of the body, would not exercise any direct or specific curative effect upon the etiological factors of a cold, or free the intestinal tract of poisons or toxins except for such benefit as might follow evacuation of the lower intestinal tract; would not furnish any relief for upset stomach conditions beyond reducing gastric acidity, and was not an effective treatment or cure for indigestion although it might bring temporary relief for discomforts arising from occasional dietary indiscretion; was not a competent treatment for headaches and would not enable one to stay clear-headed, alert, and be one's normal healthy self except as evacuation of the lower intestinal tract might accomplish such results;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and value of its preparation and to cause it to purchase substantial quantities thereof as a result of the erroneous belief so engendered:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Morton Nesmith and *Mr. Carl Stecher* for the Commission.

Mr. Isaac W. Digges, of New York City, for respondent.

SUPPLEMENTAL AND AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the Bristol-Myers Co., a corporation, hereinafter referred to as respondent, has vio-

¹ Supplemental and amended.

Complaint

36 F. T. C.

lated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Bristol-Myers Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the city of Hillside, State of New Jersey. Respondent also maintains offices in the International Building, Rockefeller Center, 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 sale and distribution of an effervescent salt known as "Sal Hepatica" 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 its said product, when sold, to be transported from its principal place of business in the city of Hillside, State of New Jersey, to purchasers thereof located in the States of the United States other than the State of New Jersey and in the District of Columbia. For more than 1 year last past, said respondent has maintained a course of trade in the aforesaid product so 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, the respondent, is now, and for the time mentioned herein has been, in substantial competition with other corporations, and with individuals, partnerships, and firms engaged in the business of selling and distributing effervescent salts and other preparations designed for similar usage in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid and for the purpose of inducing the purchase of its product, the respondent has caused various statements, claims, representations, radio continuities, and script purporting to be descriptive of said product and its curative and therapeutic properties to be published in newspapers, magazines, and periodicals distributed and circulated between and among the various States of the United States and in the District of Columbia and to be broadcasted over radio stations. The following, among others, are some of the claims, statements, and representations so made by respondent:

SAL HEPATICA promotes intestinal purification by combating constipation and clearing away "stoppage".

Our modern food inaction, excitement, the strain of everyday life—frequently

induce conditions which bring about constipation, and constipation may bring about even more serious trouble.

CLEANSE SYSTEM THOROUGHLY.

COUNTERACT ACID CONDITION.

For quicker relief of colds, take SAL HEPATICA at once. Its two-way action not only cleanses the system but also corrects the acid condition which always aggravates cold. * * *

So, at the first sign of cold, take Sal Hepatica to cleanse your system and to correct acidity—get plenty of rest and quiet (go to bed if your cold is severe)—watch your diet and drink plenty of liquids. That is the scientific way to treat colds successfully.

The mineral Salt Laxative—That corrects acidity.

Absolutely, you see you have an acid condition, too, throughout your system when you have a cold. You must correct that if you want to get well in a hurry. And Sal Hepatica corrects acidity too. That first dose * * * two teaspoonfuls in a glass of water * * * cleanses your system and gives you a big start toward counteracting acidity. Then, by continuing with smaller doses of Sal Hepatica every day, for awhile, as many physicians recommend, you restore your alkaline reserve to normal, build up your resistance, keep free of poisonous wastes, and throw off that cold so much more quickly.

In treating COLDS—Here is the first step—to quick relief—CLEAN OUT SYSTEM—COUNTERACT ACIDITY—SAL HEPATICA DOES BOTH!—* * * quickly, surely, cleanses system—combats acidity, tends to restore alkaline reserve.

* * * and combat the systemic acidity that always accompanies colds.

Almost at once the Alkaline reaction of this remarkably different laxative begins to counteract your acid condition * * * to overcome your cold.

AS AN ALKALINIZER—Such troubles as unnatural fatigue, upset stomach, as well as rheumatism, arthritis, and neuritis are often associated with or aggravated by an acid condition. Sal Hepatica, in small doses ($\frac{1}{2}$ teaspoon to glass of water) is an ideal alkalizing agent with only slight laxative action. Taken regularly in these alkalizing doses, it acts to correct the acid condition that is causing or aggravating your trouble.

What's the matter in such cases as that, my friends? Why that dull logy condition? Two causes: Poisonous wastes in your body and an acid condition throughout your system.

Consequently * * * we advise you to take a dose of Sal Hepatica the mineral salt laxative when you feel like that * * * two teaspoonfuls in a glass of water. For Sal Hepatica is the one laxative that both rids your body of harmful wastes and also combats acidity * * *

THEY ALL TOOK A LAXATIVE—BUT THAT DID ONLY HALF THE JOB—

PHOTOGRAPH
(of a woman)
HEADACHE
HANGS ON

PHOTOGRAPH
(of a man)
STOMACH STILL
UPSET

PHOTOGRAPH
(of a woman)
STILL FEELS
LISTLESS

Complaint

36 F. T. C.

To relieve these effects of Constipation ACIDITY must also be corrected.

Frequently the disagreeable effects of constipation hang on and on * * * long after your laxative has cleansed your intestinal tract of clogging wastes! The reason for this is simple. The usual laxative does cleanse your intestinal tract, but it is not designed to correct the systemic acidity that frequently accompanies constipation. What an amazing difference in the way you feel when BOTH of these conditions are corrected.

HE doesn't know that LAXATIVE ACTION IS NOT ENOUGH—(Photograph of a man)—THAT LAXATIVE WORKED—WHY DON'T I FEEL BETTER?

Acidity accompanies constipation. It also must be CORRECTED! How Sal Hepatica, unlike ordinary laxatives, does both—cleanses the intestinal tract, and corrects acid condition.

RECOMMENDED BY—DOCTORS FOR MORE THAN—40 YEARS FOR—COLDS--HEADACHES—Indigestion—UPSET STOMACH—NERVOUSNESS—UNNATURAL FATIGUE.

* * * If you want to clear up that headache quickly * * * to lose that "tired", logy feeling * * * you must, doctors agree, do these two things: CLEANSE YOUR SYSTEM AND CORRECT THE ACIDITY THAT ACCOMPANIES CONSTIPATION.

Ordinary laxative cleansed his system—but failed to correct acidity * * * STILL FEELS "HALF SICK". (Photograph of a man with "half-sick" expression). SAL HEPATICA cleansed his system AND corrected his acidity * * * FEELS LIKE A NEW MAN! (Photograph of a man with smiling expression).

If you want REAL relief from the headaches * * * the listlessness * * * the "tired feeling" * * * and other miserable effects of constipation, you must do these two things. Cleanse your system of clogging wastes—and combat the acidity that accompanies constipation.

STOP THAT COLD QUICKLY with this basic treatment.

LET US SHOW YOU * * * in 1, 2, 3 * * * WHY SAL HEPATICA HELPS THE SYSTEM THROW OFF A COLD.—(Man's photograph.)

1. HERE'S A MAN WHO IS NOT APT TO CATCH COLD—As you know, the normal bloodstream is usually alkaline. As long as it remains alkaline, colds seldom take hold. (Man's photograph.)

2. HERE'S A MAN WHO—CATCHES COLD EASILY—bad diet, over-indulgence, fatigue change the system to acid—and in an acid system cold germs take hold and multiply. Soon the victim becomes achey, heavy-headed. And in he comes to you with "Doc, what'll I do? I've got a cold and no mistake!" (Man's photograph.)

3. HERE'S HOW SAL HEPATICA FIGHTS A COLD TWO WAYS—now as you know, the modern way to lick his cold is to do two things:

1.—cleanse the system.

2.—combat the acidity that encourages a cold.

SAL HEPATICA DOES BOTH!

Not only does Sal Hepatica rid the intestines of wastes—quickly and thoroughly—but Sal Hepatica quickly brings about a definite alkaline (anti-acid) reaction, to help the system swing back towards its normal alkaline reserve.

When you feel a cold coming on * * * or if you have a cold and don't want it to get any worse * * * drink a glass of Sal Hepatica.

SAL HEPATICA * * * ready to help you back to buoyant health * * * in just a little while.

SAL HEPATICA * * * and stay, clear headed, alert, your healthy, normal self.

Complaint

It is thorough * * * helps regulate the balance of body fluids.

If your system has not been quite normal * * * and maybe you feel a trace of listlessness tonight * * * or perhaps the first warnings of a cold * * * a sick headache or upset stomach perhaps * * * just do this, first thing tomorrow morning. Put two teaspoonfuls of Sal Hepatica in a glass of water * * * Drink it * * * and in almost no time, you might say, you'll rid yourself of poisonous wastes * * *.

Moderns know you need a laxative that combats GASTRIC ACIDITY too * * * helping nature combat acidity.

Because Sal Hepatica is both a laxative and anti-acid, in addition to gently bringing you quick relief Sal Hepatica also helps nature counteract gastric acidity which naturally gives you a far faster comeback.

* * * because anyone who is catching a spring cold can always depend on Sal Hepatica, and I hope every single person who has the slightest suggestion of a cold has Sal Hepatica in the medicine cabinet.

* * * and Sal Hepatica is not only a laxative * * * quick and gentle * * * but it helps nature counteract that acidity. So you see Sal Hepatica helps fight a cold two ways.

The *reason* that Sal Hepatica is so *effective* is that when you have a cold * * * it gets after the two conditions that are usually present * * * and does it at once * * * for Sal Hepatica not only removes accumulated waste * * * but also helps nature counteract the acidity that so frequently accompanies colds * * *.

Take Sal Hepatica for a cold.

(Picture of a drug or prescription clerk holding a package of Sal Hepatica.)

The Man: I know many people take a laxative when a cold comes—always have—so how are you different?

Answer: Because I help Nature counteract acidity, help to build up the alkaline reserve so important in the body's defense against colds.

It's a "Modern" among cold remedies. That's why Sal Hepatica sales soar when winter comes. * * *

That's why many doctors recommend Sal Hepatica, for Sal Hepatica does both.

While Sal Hepatica is cleansing the intestines—quickly, gently, this mineral salt laxative is also bringing about an alkaline (anti-acid) reaction to help Nature restore the alkaline reserve that seems necessary to buoyant health.

If you'll get after your cold at its very beginning, with Sal Hepatica, you'll be doing it in a mighty effective * * * and quick way. Because Sal Hepatica does the *two* very things that so many physicians say should be done in successfully fighting a cold. As a laxative Sal Hepatica removes accumulated waste—both quickly and gently * * * and, *at the same time*—it *also* helps Nature counteract the acidity that so frequently accompanies a cold.

I got rid of that cold. Certainly glad you knew about Sal Hepatica.

You'll never know how effective Sal Hepatica is for colds until you've tried it.

Remember the next time you wake up feeling dull, lopy and not fit to live with, and when you see how quickly you are feeling alert, alive and more like your own normal self again—you'll be mighty glad you remembered Sal Hepatica—for that smile of health.

Practically everyone agrees that when you have a cold you should drink plenty of water. And you'll find that at the first sign of a cold * * * at the first warning snifle or sneeze * * *. It's an even better idea, to drink a glass

Complaint

36 F. T. C.

of water with two teaspoonfuls of sparkling Sal Hepatica in it. For Sal Hepatica is the famous saline laxative that helps fight colds *faster* * * *. First, Sal Hepatica is *speedy*—yet it's very gentle * * * and speed is mighty important in fighting any cold. Second, Sal Hepatica *also* helps nature counteract the acidity which so often accompanies a cold.

So if your husband comes home from work sniffing or sneezing—or for that matter, *any* time *any* one in your family feels a cold coming on * * * get after that cold immediately with sparkling Sal Hepatica * * * famous saline laxative that helps fight colds faster * * *. First, Sal Hepatica is *speedy*—yet it's very gentle * * * and you know how important speed is in fighting any cold. Second, Sal Hepatica also helps nature counteract the acidity that so frequently accompanies a cold.

So at the first sign of a cold * * * do the wise thing * * * and get after it *immediately* with a glass of sparkling Sal Hepatica * * * famous saline laxative that helps fight colds faster * * *. First, Sal Hepatica gives you *speedy*—yet gentle relief * * * and since the progress of a cold is quick the greater speed of Sal Hepatica is mighty important in fighting it. Second, Sal Hepatica also helps nature counteract the acidity which so often accompanies a cold.

Ah! There *is* something you can do about a spring cold, ladies and gentlemen—and it's *different*—take sparkling Sal Hepatica to help fight that cold faster. There are two very good reasons why it does, and you can check them with your own doctor—. First, Sal Hepatica is *speedy*—yet it's very gentle and speed is mighty important in fighting a cold. Second, * * * and *just* as important this famous saline laxative also helps Nature counteract the acidity that so frequently accompanies a cold * * * so far faster action against colds—get a bottle of prompt—quick acting Sal Hepatica at any drug store.

Chase a COLD faster
with *Sal Hepatica**

(Picture of man and wife, wife sniffing)

Mrs.: Darling, these Cotton Ball costumes are swell, but there isn't any use in trying mine on—I'll be down with a cold the night of the Ball.

Mr.: Not if I can help it! What you need is a saline laxative to give you double-quick, two-way help—Sal Hepatica.

(Picture of husband handing wife glass of
Sal Hepatica—wife still sniffing)

Mrs.: Sal Hepatica? Two-way help?

Mr.: You bet! First, Sal Hepatica is gentle in its laxative action, yet it acts fast—and I don't need to tell you that speed is mighty important in fighting a cold. And second, Sal Hepatica helps Nature counteract the acidity that often accompanies a cold.

(Picture several days later, husband
bowing to wife—wife in costume
smiling, not sniffing.)

Mr.: Honey, you're the queen of the Ball. Take a bow!

Mrs.: Take one yourself. I'd probably be down with a cold if you hadn't

known about that saline laxative, Sal Hepatica. It certainly chases colds faster!

Fight a COLD two ways
with *Sal Hepatica**

(Picture of husband and wife, husband
sniffing.)

Mr.: This is a cold, darling, and no mistake. I didn't dare stay out to practice any longer—in fact, I'll bet I'm in bed the day of the ski jump contest.

Mrs.: You're going to bed now, m'love—but first I'm going to give you a saline laxative with a swift, two-way help—Sal Hepatica.

(Picture of wife handing husband glass of
Sal Hepatica—husband still sniffing.)

Mr.: Swift? Two-way? Sal Hepatica must be *different*!

Mrs.: Different is right! First, Sal Hepatica is gentle in its laxative action, yet it acts fast—and I don't need to tell you that speed is important in fighting a cold. And second, Sal Hepatica helps Nature counteract the acidity that often accompanies a cold.

(Several days later, picture of man and
wife—husband holding trophy cup,
smiling, not sniffing.)

Mrs.: Oh, darling, what a jump you made! You'll be in the Olympics, next!

Mr.: You ought to get the cup, dear, because I'd probably be still down with a cold, if it hadn't been for that saline laxative, Sal Hepatica.

Whenever you feel sluggish, headachy, under the weather . . . put two teaspoonfuls of Sal Hepatica in a glass of water and drink it. Remember, the better you feel . . . the better work you do . . . and the more successful you are. And you feel better faster . . . when you take gentle, quick-acting **SAL HEPATICA**!

And, ladies and gentlemen, we sincerely hope you've *all* made that discovery. If you haven't—begin by checking the two reasons sparkling Sal Hepatica helps fight colds faster with your own doctor. First, Sal Hepatica is speedy—yet it's very gentle—and speed is mighty important in fighting a cold. Second . . . and *just* as important . . . this famous saline laxative *also* helps Nature counteract the acidity that so frequently accompanies a cold.

PAR. 4. The respondent, through the use of the aforesaid representations and others not herein detailed, represents that an acid condition of the system is the underlying cause of colds and that restoration of the alkaline balance in the body will counteract a cold and effect its cure; that Sal Hepatica will counteract such acid condition, and restore the alkaline balance thereby effecting a cure of colds; that Sal Hepatica promotes intestinal purification by clearing away stoppage and cleansing the system thoroughly; that it will free the intestinal tract of poisons; that it will correct acid conditions which accompany such troubles as unnatural fatigue, upset stomach, rheumatism, arthritis and neuritis, and thereby alleviate these ailments; that it is a

Complaint

36 F. T. C.

competent treatment for headaches, indigestion, or nervousness; that it will prevent a cold from getting worse; that it will help one back to health in just a little while; that it will enable one to stay clear-headed, alert, and be his normal healthy self and that its action is thorough and helps regulate the balance of body fluids.

PAR. 5. In truth and in fact, the acid alkali balance of the blood varies within wide limits, under normal conditions, so that slight variations in the acid alkali balance are without pathological significance. An acid condition of the system is not generally accepted as the underlying cause of colds, although an excess acid condition is sometimes associated with such condition. The restoration of the alkaline balance in the body, under such conditions will not of itself effect a cure. Sal Hepatica will not counteract or correct such condition in excess of effecting temporary neutralization of excess gastric acidity. Sal Hepatica is nothing more than a commercial preparation of certain well-known effervescent salts that have a laxative action and tend to counteract gastric hyperacidity. The use of this preparation will not promote intestinal purification by clearing away stoppage or cleanse the system thoroughly, nor will it free the intestinal tract of poison or rid the body of harmful and poisonous waste except that it will, as do other laxatives, remove waste from the intestinal tract. An acid condition of the system is sometimes associated with rheumatism, arthritis, neuritis, upset stomach, and unnatural fatigue, but the preparation Sal Hepatica will have no effect upon such conditions in excess of temporarily relieving gastric hyperacidity when such condition is present and even in such case the use of this preparation will not correct such condition sufficiently to alleviate the trouble. Sal Hepatica is not a competent treatment for headaches, indigestion, or nervousness, in excess of furnishing temporary relief when such conditions are due to gastric hyperacidity. Sal Hepatica will not enable one to stay clear-headed, alert, and be his normal healthy self, nor is the action of Sal Hepatica thorough and helpful in regulating the balance of the body fluids.

PAR. 6. There are among the competitors of respondent many other corporations, and individuals and firms who manufacture, sell, and distribute effervescent salts, saline products, and similar preparations, or other preparations designed for similar usage in commerce as hereinabove set out who do not misrepresent the therapeutic value or efficacy of their products.

PAR. 7. The foregoing statements and representations made, or caused to be made, by respondent in describing its said product, as hereinbefore alleged, were and are calculated to, and have had, and now have, a tendency and capacity to mislead and deceive a substantial

portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's product with the result that trade has been diverted unfairly to respondent from competitors, also engaged in the business of manufacturing, selling, and distributing saline preparations, laxatives, effervescent salts, and preparations designed for similar usage, who do not misrepresent the therapeutic value or efficacy of their respective products. As a consequence thereof, injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 5th day of November 1938, issued and thereafter served its complaint in this proceeding upon said respondent, Bristol-Myers Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 19th day of December 1938, the respondent filed its answer in this proceeding. Thereafter, on the 15th day of October 1940, the said Commission issued and thereafter served its supplemental and amended complaint in this proceeding upon said respondent, also charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 2d day of December 1940, the respondent filed its answer to the said supplemental and amended complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed on behalf of the respondent by its counsel, I. W. Digges, 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 in lieu of testimony in support of the charges stated in the complaint and the supplemental and amended 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

Findings

36 F. T. C.

(including inferences which it may draw from 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. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, supplemental and amended complaint, answer to each complaint, and stipulation (said stipulation having been approved, accepted, and filed); and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Bristol-Myers Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the city of Hillside, State of New Jersey. Respondent also maintains offices in the International Building, Rockefeller Center, 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 sale and distribution of a laxative preparation known as "Sal Hepatica" 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 its said product, when sold, to be transported from its principal place of business in the city of Hillside, State of New Jersey, to purchasers thereof located in the States of the United States other than the State of New Jersey, and in the District of Columbia. For more than 1 year last past said respondent has maintained a course of trade in the aforesaid product, so 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 as aforesaid, and for the purpose of inducing the purchase of its said product, the respondent has caused various statements, claims, representations, and radio continuities, purporting to be descriptive of said product and its curative and therapeutic properties, to be published in newspapers, magazines, and periodicals distributed and circulated between and among the various States of the United States and in the District of Columbia, and to be broadcast over radio stations which have sufficient power to, and do, transmit such messages to listeners thereof in States other than the State from which said broadcasts emanate. The following, among others, are some of the claims and representations so made by respondent:

The mineral Salt Laxative—that corrects acidity.

Recommended by—doctors for more than—40 years for—colds—headaches—indigestion—upset stomach—nervousness—unnatural fatigue.

Stop that cold quickly with this basic treatment.

Sal Hepatica—and stay clear headed, alert, your healthy, normal self.

It is thorough—helps regulate the balance of body fluids.

While Sal Hepatica is cleansing the intestines—quickly, gently, this mineral salt laxative is also bringing about an alkaline (anti-acid) reaction to help nature restore the alkaline reserve that seems necessary to buoyant health.

Cleanse system thoroughly.

Counteract acid condition.

As an alkalinizer—such troubles as unnatural fatigue, upset stomach, as well as rheumatism, arthritis and neuritis are often associated with, or aggravated by, an acid condition. Sal Hepatica—taken regularly in these alkalinizing doses, it acts to correct the acid condition that is causing or aggravating your trouble.

PAR. 3. The respondent, through the use of the aforesaid representations and others not herein detailed has represented that Sal Hepatica:

- (1) Will correct systemic acidity and restore the alkaline reserve of the body;
- (2) Constitutes an effective treatment or cure of a cold and will exercise a direct and specific curative effect upon the etiological factors of a cold;
- (3) Is an effective treatment or cure for rheumatism, arthritis and neuritis;
- (4) Will help regulate the balance of body fluids;
- (5) Will free the intestinal tract of poisons and toxins;
- (6) Is an effective treatment for upset stomach;
- (7) Is an effective treatment and cure for indigestion;
- (8) Is an effective treatment for unnatural fatigue;
- (9) Is an effective treatment and cure for nervousness;
- (10) Is a competent treatment for headaches;
- (11) Will enable one to stay clear headed, alert and be one's normal, healthy self.

PAR. 4. In truth and in fact, Sal Hepatica—

- (1) Will not correct systemic (as distinguished from gastric) acidity, or restore the alkaline reserve of the body;
- (2) Will not constitute an effective treatment or cure of a cold, nor will exercise any direct or specific curative effect upon the etiological factors of a cold other than such benefit as may come from the relief of constipation if constipation accompanies a cold;
- (3) Is not an effective treatment or cure of rheumatism, arthritis, and neuritis;
- (4) Will not regulate the balance of body fluids;
- (5) Will not free the intestinal tract of poisons or toxins although Sal Hepatica will evacuate the lower intestinal tract;
- (6) Is not an effective treatment for upset stomach and will not furnish any relief for such conditions beyond reducing gastric acidity;
- (7) Is not an effective treatment or cure for indigestion although Sal Hepatica may bring temporary relief for discomforts arising from occasional dietary indiscretions;

- (8) Is not an effective treatment for unnatural fatigue;
- (9) Is not an effective treatment or cure for nervousness;
- (10) Is not a competent treatment for headaches except when caused by the failure of the proper evacuation of the lower intestinal tract;
- (11) Will not enable one to stay clear-headed, alert and be one's normal, healthy self, and is of no therapeutic value in the promotion of such conditions except to the extent that the absence of such conditions is due to the failure of a proper evacuation of the lower intestinal tract.

PAR. 5. The Commission therefore finds that the statements and representations made by respondent with respect to its preparation, as set forth herein, are misleading and deceptive, and constitute false advertisements.

PAR. 6. The Commission finds further 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 with respect to the therapeutic properties and value of respondent's preparation, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such preparation as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Bristol-Myers 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 its medicinal preparation designated "Sal Hepatica," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

- (a) That said preparation will correct systemic (as distinguished from gastric) acidity, or restore the alkaline reserve of the body;
- (b) That said preparation constitutes a cure or an effective treatment for colds, or that it will exercise any direct or specific curative effect upon the etiological factors of a cold other than such benefit as may result from the relief of constipation if constipation accompanies the cold;
- (c) That said preparation is a cure or an effective treatment for rheumatism, arthritis, or neuritis;
- (d) That said preparation will help regulate the balance of body fluids;
- (e) That said preparation will free the intestinal tract of poisons or toxins (this prohibition, however, shall not prevent respondent from representing that said preparation is a competent laxative which will evacuate the lower intestinal tract);
- (f) That said preparation is an effective treatment for upset stomach, or that it furnishes any relief for such condition in excess of its value in reducing gastric acidity;
- (g) That said preparation is a cure or an effective treatment for indigestion (this prohibition, however, shall not prevent respondent from representing that said preparation is of value in the temporary relief of discomforts which arise from occasional dietary indiscretions);
- (h) That said preparation is an effective treatment for unnatural fatigue;
- (i) That said preparation is a cure or an effective treatment for nervousness;
- (j) That said preparation is an effective treatment for headaches, except in those cases where such condition is caused by the failure of a proper evacuation of the lower intestinal tract;

Order

36 F. T. C.

- (k) That said preparation will enable one to stay clear-headed, alert, or one's normal, healthy self; or that said preparation is of any therapeutic value in the promotion of such conditions, except in those cases where the absence of such conditions is due to the failure of a proper evacuation of the lower intestinal tract.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's preparation, 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.

Syllabus

IN THE MATTER OF

DAN TRAINOR, TRADING UNDER THE NAME NATIONAL ADMINISTRATORS 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 4870. Complaint Nov. 12, 1942—Decision, May 8, 1943

Where an individual engaged in interstate sale and distribution of forms, form letters and envelopes for use by creditors and collection agencies in obtaining information concerning debtors, which were employed by two mail-order houses and a collection agency, among others, and which—calling, under the subterfuge below set out, for such information as a debtor's name, nickname, address, description, occupation, employer, income, home ownership or that of farm or car, and other details with respect to debtor's operations, status, etc.—displayed trade name "National Administrators," and such other matter as "ANSWER ALL THE FOLLOWING QUESTIONS IMMEDIATELY SO THAT WE CAN DETERMINE WHETHER YOU ARE THE PERSON TO WHOM THE MONEY SHOULD BE SENT," "Have you inherited any money recently?" and "It is understood that if the information furnished definitely establishes my identity, I will receive the money promptly," and in the letter employed displaying aforesaid trade name "Money is being held for * * * We believe that you are this person" and "To make it possible for us to send you this money at once fill out the enclosed form and return it to us without delay. * * * There is real money waiting for you";

Making use of a scheme under which said mail-order concerns, collection agency, and other purchasers inserted in the appropriate places names and addresses of persons concerning whom information was sought, placed the form letters and questionnaires, together with stamped reply envelopes addressed to said "National Administrators," in large envelopes purporting to be from said "National Administrators," and sent them to said individual, who mailed them and sent to said purchasers such replies as were received, and also sent to those replying a penny each accompanied by the statement that such was the total held for such person and a request not to communicate further with said individual;

- (a) Falsely represented, directly and by implication, through use of name "National Administrators" that his business functioned as administrator of estates of decedents; and
- (b) Falsely represented, and placed in the hands of aforesaid and other purchasers means of falsely representing, to many persons, that funds of more than trivial amount were being held for them by said National Administrators as administrators of decedents' estates, and that information sought was to identify the recipient as the proper person to receive such funds; and

Where (1) aforesaid mail-order houses, Chicago concerns with extensive businesses, selling household furnishings and other merchandise at retail on credit to purchasers in various States, and, in efforts to collect amounts claimed due from purchasers, making use of letters, forms and envelopes acquired from aforesaid individual; and two individuals engaged in the collection of delinquent accounts for retail merchants in various States and in the course of their said business employing said individual's letters, forms, and envelopes—

Complaint

36 F. T. C.

(c) Falsely represented, directly and by implication, to many persons that funds of more than trivial amounts were being held for such persons by "National Administrators" as administrators of decedents' estates;

The facts being that said representations were false, information called for by the questionnaires and letters was sought solely for the purpose of assisting said Chicago mail-order concerns, collection agents, etc., and others, in the collection of alleged delinquent accounts, and name "National Administrators" was merely a disguise for the true nature of respondent Trainor's business;

With effect of misleading and deceiving, and with capacity and tendency to mislead and deceive, many of the persons to whom the letters, etc., were sent into the erroneous belief that such representations were true, and to cause them, by reason thereof, to give information which they otherwise would not supply:

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. Randolph W. Branch for the Commission.

Comfort, Comfort & Irish, of Des Moines, Ia., for Dan Trainor, John A. Janssen and Lloyd L. Hill.

Fischel, Kahn & Heart, of Chicago, Ill., for Chicago Mail Order Co., W. L. Schnadig and Ralph L. Arnheim.

Mr. J. L. Alexander, of Chicago, Ill., for Spiegel, Inc., Modie J. Spiegel, Frederick W. Spiegel, Earl D. Weil, Edward L. Swikard, H. G. Meinig, Bernadette Saindon, and Walter A. Gatzert.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Dan Trainor, an individual, trading under the name National Administrators, John A. Janssen and Lloyd L. Hill, individually, and trading under the name Consumer Distribution Consultants, Chicago Mail Order Co., a corporation, Spiegel, Inc., a corporation, W. L. Schnadig and Ralph L. Arnheim, individually, and as officers of Chicago Mail Order Co., Modie J. Spiegel, Frederick W. Spiegel, Earl D. Weil, Edward L. Swikard, H. G. Meinig, Bernadette Saindon, and Walter A. Gatzert, individually, and as officers of Spiegel, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dan Trainor, is an individual, trading under the name National Administrators, with an office and principal place of business at 423 Grand Street, Winona, Minn.

Respondents, John A. Janssen and Lloyd L. Hill, are copartners, trading under the name Consumer Distribution Consultants, with an office and principal place of business at 520 North Michigan Avenue, Chicago, Ill.

Respondent, Chicago Mail Order Co., is a corporation, organized and existing under the laws of the State of Illinois, with an office and principal place of business at 511 South Paulina Street, Chicago, Ill. Respondents, W. L. Schnadig and Ralph L. Arnheim, are, and at all times mentioned herein, have been, respectively, the president and the secretary-treasurer, of said corporation and in control of the management, policies and operation thereof, particularly in respect to the acts and practices herein alleged.

Respondent, Spiegel, Inc., is a corporation, organized and existing, under the laws of the State of Delaware, with an office and principal place of business at 1061 West Thirty-fifth Street, Chicago, Ill. Respondents, Modie J. Spiegel, Bernadette Saindon and Walter A. Gatzert, are, and at all times mentioned herein have been, respectively, president, secretary and treasurer, of respondent Spiegel, Inc., and respondents, Frederick W. Spiegel, Earl D. Weil, Edward L. Swikard, and H. G. Meinig are, and at all times mentioned herein have been, vice presidents, of respondent, Spiegel, Inc.; said officers are now, and at all times mentioned herein have been, in control of the management, policies and operation of said corporate respondent, particularly in respect to the acts, practices, and methods herein alleged.

PAR. 2. Respondent, Dan Trainor, is now, and has been for more than 6 months last past, engaged in the business of selling and distributing envelopes, printed form letters, and questionnaire forms, said letters and questionnaire forms being as exemplified by copies thereof, marked respectively exhibits A, B, and C attached hereto, and by this reference incorporated herein and made a part hereof, designed and intended to be used as hereinafter set forth by creditors and collection agencies in obtaining information concerning delinquent debtors. Respondent, Trainor, causes the said envelopes, form letters and questionnaire forms, when sold, to be transported from his aforesaid place of business in the State of Minnesota to respondents, Chicago Mail Order Co., Spiegel, Inc., and Janssen and Hill, all located in the State of Illinois, and others in various States of the United States, and at all times mentioned herein has maintained, a course of trade therein in commerce between and among the various States of the United States.

PAR. 3. Respondent, Spiegel, Inc., is now, and has been for more than 6 months last past, engaged in the business of selling at retail household furnishings and other merchandise of various sorts and

Complaint

36 F. T. C.

kinds. The business of said respondent is what is generally known as a "mail-order business," in the course and conduct of which orders for various articles are received through the mails from various persons located in States of the United States other than the State of Illinois, and the articles so ordered are caused to be transported by said respondent from its aforesaid place of business in the State of Illinois to the persons ordering the same. Said respondent's business is extensive and it maintains, and at all times mentioned herein has maintained, a course of trade in its said wares in commerce between and among the various States of the United States and in the District of Columbia. In connection with a large number of its sales said respondent extends credit to purchasers located in various States of the United States other than the State of Illinois. In many cases purchasers on credit from said respondent fail to meet their obligations when due, and said respondent in such cases exerts itself affirmatively to effect collection of the amounts which it claims are due it from such purchasers. In the course of its efforts to collect, it frequently desires to ascertain the current locations and addresses of many of such purchasers and for the purpose of so doing it employs the letters, forms, and envelopes acquired from respondent Trainor as hereinabove stated, in the manner hereinafter set forth.

PAR. 4. Respondents, John A. Janssen and Lloyd L. Hill, are now, and have been for more than 6 months last past, engaged in the business of collecting delinquent accounts for retail merchants located in various States of the United States. In the course of their efforts to collect such delinquent accounts, they frequently desire to ascertain the current locations and addresses of many such delinquent debtors and for the purpose of so doing employ the letters, forms, and envelopes acquired from respondent Trainor as hereinabove stated, in the manner hereinafter set forth.

PAR. 5. Respondent, Chicago Mail Order Co., is now, and has been for more than 6 months last past, engaged in the business of selling at retail goods and wares of various sorts and kinds. The business of said respondent is what is generally known as a "mail-order business" in the course and conduct of which orders for various articles are received through the mails from various persons located in States of the United States other than the State of Illinois and articles so ordered are caused to be transported by said respondent from its aforesaid place of business in the State of Illinois to the persons ordering the same. Said respondent's business is extensive and it maintains, and at all times mentioned herein has maintained, a course of trade in its said wares in commerce between and among the various States of the United States and in the District of Columbia. In connection with a large number of its sales said respondent extends credit to purchasers located

in various States of the United States other than the State of Illinois. In many cases purchasers on credit from respondent, Chicago Mail Order Co., fail to meet their obligations when due, and said respondent in such cases exerts itself affirmatively to effect collection of the amounts which it claims are due from such purchasers. In the course and conduct of its efforts to collect, it frequently desires to ascertain the current locations and addresses of many of such purchasers and for the purpose of so doing it employs the letters, forms, and envelopes acquired from respondent Trainor as hereinabove stated, in the manner hereinafter set forth.

PAR. 6. In the blank space which appears at the tops of the forms as exemplified by exhibits A and B and below the words "Money is being held for" in the letter exemplified by exhibit C, said respondents, Chicago Mail Order Co., Spiegel, Inc., Janssen and Lloyd, and others who purchase said forms, letters, and envelopes from respondent Trainor, insert the names, and such addresses as they have available, of the persons concerning whom information is sought. Said respondents and other purchasers then place the letters exemplified by exhibit C, and one of the questionnaire forms exemplified by either exhibit A or exhibit B in large envelopes upon which appear in the upper left hand-corners:

Return in 5 days to
National Administrators,
Winona, Minn.

together with stamped reply envelopes addressed to

National Administrators,
Winona, Minn.

The large envelopes with the necessary postage attached, and their contents, are then sent by respondents, Spiegel, Inc., Chicago Mail Order Co., John A. Janssen and Lloyd L. Hill, and other purchasers of the said articles from respondent, Trainor, from their various places of business to respondent, Trainor, at Winona, Minn., usually in bundles containing a number of such filled envelopes.

Upon receipt of the said large addressed envelopes, with enclosures, by respondent, Trainor, at Winona, Minn., said respondent causes them to be deposited in the United States mails.

The questionnaires returned to respondent, Trainor, at Winona, Minn., are transmitted by him to respondents, Spiegel, Inc., Chicago Mail Order Co., and Janssen and Hill at their Chicago, Ill., addresses, and to the other purchasers from respondent, Trainor, who have purchased the said material from him. Respondent, Trainor, also sends to those who return the said questionnaires one penny each, together

Complaint

36 F. T. C.

with a statement that this is the total amount held for such person and requesting that such person do not communicate with him further.

PAR. 7. Through the use of the name National Administrators said respondents have represented directly and by implication that the said concern functions in the capacity of an administrator of estates of decedents.

PAR. 8. By means of the aforesaid envelopes, form letters, and questionnaires, respondent, Trainor, has falsely represented, and has placed in the hands of the other respondents, and others, means of falsely representing, and said other respondents, and others, have falsely represented to many persons, directly and by implication, that funds are being held for such persons by National Administrators; that such funds are of more than trivial amount; that National Administrators holds the said fund in the capacity of administrator of decedent estates and that the information sought by means of said letters and questionnaires is for the purpose of identifying the recipients thereof as the proper persons to receive said funds.

PAR. 9. The said representations were false and misleading. In truth and in fact, the said respondent, Trainor, trading under the name National Administrators, was not acting in the capacity of administrator of the estate of any decedent, was not administrator of any estate in which any recipient of said letters and questionnaires had an interest, and has not had in his possession any sums of money rightfully due to any such person. Respondent, Trainor, trading under the name National Administrators, has not acted in the capacity of administrator of any decedent estate. The information called for by the said questionnaires and letters was not sought for the purpose of identifying the recipients as the persons entitled to funds from estates or from any other source, but was sought solely for the purpose of assisting respondents, Speigel, Inc., Chicago Mail Order Co., John A. Janssen and Lloyd L. Hill, and others, in the collection of alleged delinquent accounts. The said name National Administrators was merely a disguise for the true nature of respondent's business.

PAR. 10. The use, as hereinabove set forth, of the foregoing false and misleading statements and representations has had the tendency and capacity to, and has, misled and deceived many persons to whom the said letters, questionnaires, and envelopes were sent, into the erroneous and mistaken belief that said statements and representations were true and that the said name, National Administrators, truthfully indicated and described the capacity and character of the concern purportedly requesting the information and by reason thereof gave information which they would not otherwise have supplied.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and consti-

721

Exhibits

tute unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act.

EXHIBIT A

ANSWER ALL THE FOLLOWING
QUESTIONS IMMEDIATELY SO
THAT WE CAN DETERMINE
WHETHER YOU ARE THE PERSON
TO WHOM THE MONEY SHOULD
BE SENT:

1. Is name above your full correct name? -----
2. Are you referred to by any "nickname" (state name) -----
3. To what address should money be sent? -----
4. Have you inherited any money recently? -----
5. What is your age?---- Height?---- Color of hair? ----- Color of eyes? ----
6. What is your occupation? -----
7. By whom employed (employer's name and address) -----
8. If insured, give name and address of local agent -----
9. What is your income from present employment? (weekly) -----
10. Do you have any other sources of income? (Insurance, annuities, pensions, disability compensations, etc.) -----
11. Do you own your home? -----
12. Do you own a car? -----
13. Give mother's birthplace and maiden name -----
14. When were you born? ----- Where? -----
15. Do you have any dependents?----- How many?-----
16. Give names and addresses of personal references: -----

All answers furnished are, to the best of my ability, truthful and complete. It is understood that if the information furnished definitely establishes my identity, I will receive the money promptly.

Your signature -----

If any additional remarks, please write on other side.

EXHIBIT B

ANSWER ALL THE FOLLOWING
QUESTIONS IMMEDIATELY SO
THAT WE CAN DETERMINE
WHETHER YOU ARE THE PERSON
TO WHOM THE MONEY SHOULD
BE SENT:

1. Is name above your full correct name? -----
2. Are you referred to by any "nickname" (state name) -----
3. To what address should money be sent? -----
4. Have you inherited any money recently? -----

Exhibits

5. What is your age? ____ Height? ____ Color of hair? ____ Color of eyes? ____
6. What is your occupation? _____
7. By whom employed (employer's name and address) _____

8. What is your income from present employment? (weekly) _____

9. Is your occupation farming? Yes -- No. -- If so answer following questions:
 - a. Yearly income _____ b. Location of your farm _____
 - c. Number of acres you are farming ____ d. Do you own your own farm? ____
 - Renter? _____ Share cropper _____ e. Is your farm mortgaged? _____
 - f. Number of acres under cultivation _____ Wheat _____ Corn _____
 - Oats _____ Tobacco _____ Cotton _____ Potatoes _____ Other _____
 - g. Number of cattle _____ Hogs _____ Chickens _____
 - h. What is your income from eggs and milk? _____
 - i. Do you own your own equipment? _____
10. Do you have any other sources of income? (Insurance, annuities, pensions, disability compensations, etc.) _____
11. If insured, give name and address of local agent _____
12. Do you own your home? _____ 13. Do you own a car? _____
14. Give mother's birthplace and maiden name _____
15. When were you born? _____ Where? _____
16. Do you have any dependents? _____ How many? _____
17. Give names and addresses of personal references: _____

All answers furnished are, to the best of my ability, truthful and complete. It is understood that if the information furnished definitely establishes my identity, I will receive the money promptly.

Your signature _____

If any additional remarks, please write on other side.

EXHIBIT C

NATIONAL ADMINISTRATORS

WINONA, MINNESOTA

Money is being held for _____
We believe that you are this person.

This money will be sent you the moment we are absolutely certain that you are really the person for whom it is intended.

To make it possible for us to send you this money at once, fill out the enclosed form and return it to us without delay.

There is no obligation whatever nor expense to you. Merely answer the questions truthfully and thus enable us to place the cash money we are holding in your hands immediately.

If you are the person we are looking for—and we think you are—use the stamped self-addressed envelope to return the form to us now. There is real money waiting for you.

Sincerely yours,

NATIONAL ADMINISTRATORS.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 12, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Dan Trainor, trading under the name National Administrators, John A. Janssen and Lloyd L. Hill, individually, and trading under the name Consumer Distribution Consultants, Chicago Mail Order Company, a corporation, E. L. Schnadig (referred to in the complaint as W. L. Schnadig) and Ralph L. Arnheim, individually, and as officers of Chicago Mail Order Company, Spiegel, Inc., a corporation, and Modie J. Spiegel, Frederick W. Spiegel, Earl D. Weil, Edward L. Swikard, H. G. Meinig, Bernadette Saindon, and Walter A. Gatzert, individually, and as officers of Spiegel, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Subsequently, the respondents filed their answers to the complaint, in which answers they admitted all of 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 answers thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dan Trainor, is an individual, trading under the name National Administrators, with an office and principal place of business at 423 Grand Street, Winona, Minn.

Respondents, John A. Janssen and Lloyd L. Hill, are copartners trading under the name Consumer Distribution Consultants, with an office and principal place of business at 520 North Michigan Avenue, Chicago, Ill.

Respondent, Chicago Mail Order Company, is a corporation, organized and existing under the laws of the State of Illinois, with an office and principal place of business at 511 South Paulina Street, Chicago, Ill. Respondents, E. L. Schnadig and Ralph L. Arnheim are, and at all times mentioned herein have been, the president and the secretary-treasurer, respectively, of said corporation, and in control of the management, policies and operation thereof, particularly in respect to the acts and practices hereinafter set forth.

Respondent, Spiegel, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with an office and principal

place of business at 1061 West Thirty-fifth Street, Chicago, Ill. Respondents, Modie J. Spiegel, Bernadette Saindon, and Walter A. Gatzert are, and at all times mentioned herein, have been, president, secretary, and treasurer, respectively, of respondent, Spiegel, Inc.; and respondents, Frederick W. Spiegel, Earl D. Weil, Edward L. Swikard, and H. G. Meinig are, and at all times mentioned herein, have been, vice presidents of respondent, Spiegel, Inc. These officers are now, and at all times mentioned herein have been, in control of the management, policies, and operation of said corporate respondent, particularly in respect to the acts, practices, and methods hereinafter set forth.

PAR. 2. Respondent, Dan Trainor, is now, and has been for more than 6 months last past, engaged in the business of selling and distributing envelopes, printed form letters, and questionnaire forms (copies of such letters and questionnaire forms being attached hereto as Exhibits A, B, and C, and made a part hereof) designed and intended to be used, as hereinafter set forth, by creditors and collection agencies in obtaining information concerning delinquent debtors. Respondent, Trainor, causes the envelopes, form letters, and questionnaire forms, when sold, to be transported from his place of business in the State of Minnesota to respondents, Chicago Mail Order Co., Spiegel, Inc., and Janssen and Hill, all located in the State of Illinois, and others in various States of the United States, and at all times mentioned herein respondent Trainor has maintained a course of trade therein in commerce between and among the various States of the United States.

PAR. 3. Respondent, Spiegel, Inc., is now, and has been for more than 6 months last past, engaged in the business of selling at retail household furnishings and other merchandise of various sorts and kinds. The business of said respondent is what is generally known as a mail-order business, in the course and conduct of which, orders for various articles are received through the mails from various persons located in States of the United States other than the State of Illinois and the articles so ordered are caused to be transported by respondent from its place of business in the State of Illinois to the persons ordering the same. Respondent's business is extensive, and it maintains and at all times mentioned herein has maintained a course of trade in its wares in commerce between and among the various States of the United States and in the District of Columbia. In connection with a large number of its sales, the respondent extends credit to purchasers located in various States of the United States other than the State of Illinois. In many cases, purchasers on credit from respondent fail to meet their obligations when due, and the respondent in such cases exerts itself affirmatively to effect collection

of the amounts which it claims are due it from such purchasers. In the course of its efforts to collect, it frequently desires to ascertain the current locations and addresses of many of such purchasers, and for the purpose of so doing it employs the letters, forms, and envelopes acquired from respondent, Trainor, as hereinabove stated, in the manner hereinafter set forth.

PAR. 4. Respondents, John A. Janssen and Lloyd L. Hill, are now, and have been for more than 6 months last past, engaged in the business of collecting delinquent accounts for retail merchants located in various States of the United States. In the course of their efforts to collect such delinquent accounts, they frequently desire to ascertain the current locations and addresses of many of such delinquent debtors, and for the purpose of so doing, employ the letters, forms, and envelopes acquired from respondent, Trainor, as hereinabove stated, in the manner hereinafter set forth.

PAR. 5. Respondent, Chicago Mail Order Co., is now, and has been for more than 6 months last past, engaged in the business of selling at retail goods and wares of various sorts and kinds. The business of said respondent is what is generally known as a mail-order business, in the course and conduct of which orders for various articles are received through the mails from various persons located in States of the United States other than the State of Illinois and articles so ordered are caused to be transported by respondent from its place of business in the State of Illinois to the persons ordering the same. Respondent's business is extensive, and it maintains and at all times mentioned herein has maintained a course of trade in its wares in commerce between and among the various States of the United States and in the District of Columbia. In connection with a large number of its sales the respondent extends credit to purchasers located in various States of the United States other than the State of Illinois. In many cases purchasers on credit from respondent, Chicago Mail Order Co., fail to meet their obligations when due, and respondent in such cases exerts itself affirmatively to effect collection of the amounts which it claims are due from such purchasers. In the course and conduct of its efforts to collect, it frequently desires to ascertain the current locations and addresses of many of such purchasers, and for the purpose of so doing it employs the letters, forms, and envelopes acquired from respondent, Trainor, as hereinabove stated, in the manner hereinafter set forth.

PAR. 6. In the blank space which appears at the top of the forms as exemplified by exhibits A and B, and below the words "Money is being held for" in the letter exemplified by exhibit C, respondents,

Findings

36 F. T. C.

Chicago Mail Order Co., Spiegel, Inc., and Janssen and Hill, and others who purchase such forms, letters, and envelopes from respondent, Trainor, insert the names and such addresses as they have available of the persons concerning whom information is sought. These respondents and other purchasers then place the letters exemplified by exhibit C, and one of the questionnaire forms exemplified by either exhibit A or exhibit B, in large envelopes upon which appears in the upper left-hand corner—

Return in 5 days to
National Administrators,
Winona, Minnesota,

together with stamped reply envelopes addressed to—

National Administrators,
Winona, Minnesota.

The large envelopes, with the necessary postage attached, and their contents are then sent by respondents, Spiegel, Inc., Chicago Mail Order Co., and Janssen and Hill, and by other purchasers of respondent, Trainor's material, from their various places of business to respondent, Trainor, at Winona, Minn., usually in bundles containing a number of such filled envelopes. Upon receipt by respondent, Trainor, of these large addressed envelopes with enclosures, he causes them to be deposited in the United States mail.

The questionnaires returned to respondent, Trainor, at Winona, Minn., are transmitted by him to respondents, Spiegel, Inc., Chicago Mail Order Co., and Janssen and Hill, at their Chicago, Ill., addresses, and to the other purchasers of his material at their various locations. Respondent, Trainor, also sends 1 penny each to those who return the questionnaires, together with a statement that this is the total amount held for such persons and a request that they do not communicate with him further.

PAR. 7. Through the use of the name "National Administrators," the respondents have represented, directly and by implication, that such concern functions in the capacity of an administrator of estates of decedents.

PAR. 8. By means of the aforesaid envelopes, form letters, and questionnaires, respondent, Trainor, falsely represents and places in the hands of the other respondents and others the means of falsely representing, and such other respondents and others falsely represent, to many persons, directly and by implication, that funds are being held for such persons by National Administrators; that such funds are of more than trivial amount; that National Administrators holds the funds in the capacity of administrator of decedent estates; and that

721

Exhibits

the information sought by means of the letters and questionnaires is for the purpose of identifying the recipients thereof as the proper persons to receive such funds.

PAR. 9. These representations are false and misleading. In truth and in fact, respondent, Trainor, trading under the name "National Administrators," is not acting in the capacity of administrator of the estate of any decedent, is not administrator of any estate in which any recipient of the letters and questionnaires has an interest, and does not have in his possession any sum of money rightfully due to any such person. The information called for by the questionnaires and letters is not sought for the purpose of identifying the recipients as the persons entitled to funds from estates or from any other source, but is sought solely for the purpose of assisting respondents, Spiegel, Inc., Chicago Mail Order Co., and Janssen and Hill, and others, in collection of alleged delinquent accounts. The name "National Administrators" is merely a disguise for the true nature of respondent Trainor's business.

PAR. 10. The use as hereinabove set forth, of the foregoing false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive many of the persons to whom the letters, questionnaires, and envelopes are sent into the erroneous and mistaken belief that such statements and representations are true, and that the name "National Administrators" truthfully indicates and describes the capacity and character of the concern purportedly requesting the information; and the tendency and capacity to cause such persons, by reason thereof, to give information which they otherwise would not supply.

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.

EXHIBIT A

ANSWER ALL THE FOLLOWING
QUESTIONS IMMEDIATELY SO
THAT WE CAN DETERMINE
WHETHER YOU ARE THE PER-
SON TO WHOM THE MONEY
SHOULD BE SENT:

1. Is the name above your full correct name? _____
2. Are you referred to by any "nickname"? (state name) _____
3. To what address should money be sent? _____
4. Have you inherited any money recently? _____

Exhibits

36 F. T. C.

5. What is your age? _____ Height? _____ Color of hair? _____ Color of eyes? _____
6. What is your occupation? _____
7. By whom employed? (employer's name and address) _____

8. If insured, give name and address of local agent _____

9. What is your income from present employment? (weekly) _____
10. Do you have any other sources of income? (insurance, annuities, pensions, disability compensations, etc.) _____
11. Do you own your home? _____
12. Do you own a car? _____
13. Give mother's birthplace and maiden name _____

14. When were you born? _____ Where? _____
15. Do you have any dependents? _____ How many? _____
16. Give names and addresses of personal references: _____

All answers furnished are, to the best of my ability, truthful and complete. It is understood that if the information furnished definitely establishes my identity, I will receive the money promptly.

Your signature _____

If any additional remarks, please write on other side.

EXHIBIT B

ANSWER ALL THE FOLLOWING
 QUESTIONS IMMEDIATELY SO
 THAT WE CAN DETERMINE
 WHETHER YOU ARE THE PER-
 SON TO WHOM THE MONEY
 SHOULD BE SENT:

1. Is name above your full correct name? _____
2. Are you referred to by any "nickname"? (state name) _____
3. To what address should money be sent? _____
4. Have you inherited any money recently? _____
5. What is your age? _____ Height? _____ Color of hair? _____ Color of eyes? _____
6. What is your occupation? _____
7. By whom employed? (employer's name and address) _____

8. What is your income from present employment? (weekly) _____

721

Exhibits

9. Is your Occupation farming? Yes ----- No ----- If so answer following questions: a. Yearly Income ----- b. Location of your farm ----- c. Number of acres you are farming ----- d. Do you own your own farm? ----- Renter? ----- Share Cropper? ----- e. Is your farm mortgaged? ----- f. Number of acres under cultivation ----- Wheat ----- Corn ----- Oats ----- Tobacco ----- Cotton ----- Potatoes ----- Other ----- g. Number of cattle ----- Hogs ----- Chickens ----- h. What is your income from eggs and milk? ----- i. Do you own your own equipment? -----
10. Do you have any other sources of income? (insurance, annuities, pensions, disability compensations, etc.) -----
11. If insured, give name and address of local agent -----
12. Do you own your home? -----
13. Do you own a car? -----
14. Give mother's birthplace and maiden name -----
15. When were you born? ----- Where? -----
16. Do you have any dependents? ----- How many? -----
17. Give names and addresses of personal references: -----

All answers furnished are, to the best of my ability, truthful and complete. It is understood that if the information furnished definitely establishes my identity, I will receive the money promptly.

Your signature -----

If any additional remarks, please write on other side.

EXHIBIT C

NATIONAL ADMINISTRATORS

WINONA, MINNESOTA

Money is being held for -----

We believe that you are this person.

This money will be sent you the moment we are absolutely certain that you are really the person for whom it is intended.

To make it possible for us to send you this money at once fill out the enclosed form and return it to us without delay.

There is no obligation whatever nor expense to you. Merely answer the questions truthfully and thus enable us to place the cash money we are holding in your hands immediately.

If you are the person we are looking for—and we think you are—use the stamped self-addressed envelope to return the form to us now. There is real money waiting for you.

Sincerely yours,

NATIONAL ADMINISTRATORS.

DT

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in the complaint and waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

1. *It is ordered*, That respondent, Dan Trainor, individually, and trading under the name, National Administrators, 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 his form letters and questionnaires, or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

(a) Using the words "National Administrators," or any other word or words of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent acts in the capacity of an administrator of estates of decedents, or that respondent's business bears any other relation to such estates.

(b) Representing, directly or by implication, that any funds or other property are being held by respondent for persons concerning whom information is sought through respondent's letters, questionnaires, or other material.

(c) Representing, directly or by implication, that the information sought through respondent's letters, questionnaires, or other material is for the purpose of determining whether the person concerning whom such information is sought is entitled to receive funds or any other property from the estate of a decedent.

(d) Using, or placing in the hands of others for use, form letters, questionnaires, or other material which represent, directly or by implication, that respondent's business is other than that of obtaining information for use in the collection of debts, or that the information sought through such letters, questionnaires, or other material is for any purpose other than for use in the collection of debts.

2. *It is further ordered*, That respondents, Chicago Mail Order Co., a corporation, and its officers; E. L. Schnadig and Ralph L. Arnheim, individually, and as officers, of Chicago Mail Order Co.; Spiegel, Inc., a corporation, and its officers; Modie J. Spiegel, Frederick W. Spiegel,

Earl D. Weil, Edward L. Swikard, H. G. Meinig, Bernadette Saindon, and Walter A. Gatzert, individually, and as officers, of Spiegel, Inc.; and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and distribution of respondents' merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, including the collection or attempted collection of the purchase price of such merchandise, do forthwith cease and desist from:

(a) Using any form letters, questionnaires, or any other printed or written material which contain any representation prohibited in paragraph 1 hereof.

(b) Using, in connection with the collection or attempted collection of the purchase price of merchandise, any form letters, questionnaires, cards, or any other printed or written material which represent, directly or by implication, that the information sought through such means is for any purpose other than for use in the collection of debts.

3. *It is further ordered*, That respondents, John A. Janssen and Lloyd L. Hill, individually, and trading as Consumer Distribution Consultants, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the carrying on of respondents' collection business in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Using any form letters, questionnaires, or any other printed or written material which contain any representations prohibited in paragraph 1 hereof.

(b) Using, in connection with the collection or attempted collection of debts, any form letters, questionnaires, cards, or any other printed or written material which represent, directly or by implication, that the information sought through such means is for any purpose other than for use in the collection of debts.

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

IN THE MATTER OF
CHARLOTTE NOVELTY COMPANY

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

Docket 3457. Complaint, June 16, 1938—Decision, May 12, 1943

Where an individual engaged in competitive interstate sale and distribution of various articles of merchandise, including manicure sets, electric lamps, wallets, pictures, silverware, chinaware, clocks, watches, cameras, dolls, and cosmetic preparations—

- (a) Sold his said merchandise by means of explanatory and descriptive circulars and pull cards under a sales plan by which the particular article secured by a customer and the price paid therefor were determined by chance by the particular tab pulled and matter revealed thereunder; and thereby

Supplied to and placed in the hands of operators—and notwithstanding "Notice to Purchaser" giving option to refuse purchase of article secured at price shown, which, not ordinarily called to customer's attention, was inconsistent with the successful operation of the plan and operator's compensation in cash or merchandise after remission of money secured through sale of all the chances—means of conducting lotteries in the sale and distribution of his merchandise in accordance with plan in question, under which the facts as to whether the customer secured an article of greater retail value than the price designated therefor, and which specific article, were determined wholly by lot or chance, contrary to an established public policy of the United States Government and in competition with those unwilling to use any such method and refraining therefrom;

With result that many persons were attracted by said sales method and the element of chance involved therein, and were thereby induced to buy and sell his merchandise in preference to that of his aforesaid competitors, thereby diverting trade from them to him; and

- (b) Represented through use in his circulars of such legends as "Gifts or Cash Yours absolutely Without Cost" and "How to get your Gifts without any cost to you," that the articles offered to his sales representatives were free, when in fact none was given away free but all were supplied only as compensation for services rendered in sale of merchandise, and price of such articles was included in that of those which representative was required to sell;

With tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous belief that such articles of merchandise were given by him to his representatives free, and to cause such portion of the public to undertake the sale of his merchandise in preference to that of his competitors, as a consequence whereof, substantial trade was diverted unfairly from competitors 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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Mr. Charles Cohen, *Mr. S. Alfred Mund* and *Aaron & Aaron*, of Baltimore, Md., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent is an individual, trading under the name of Charlotte Novelty Co., with his principal office and place of business located at 2631 Pennsylvania Avenue, Baltimore, Md. He is now, and for some time last past, has been, engaged in the sale and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, clocks, watches, cameras, dolls, cosmetics, and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be shipped or transported from his place of business in the State of Maryland to purchasers thereof located in the various States of the United States other than the State of Maryland, and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and distributes said articles of merchandise by means of a lottery scheme or game of chance. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including, among other things, a sales circular. Respondent's merchandise is distributed to the purchasers thereof in the following manner: A portion of said sales circular consists of a list on which are designated a number of items of merchandise and the respective prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price

Complaint

36 F. T. C.

thereof are so concealed that the purchasers and prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the customer for the price designated on the tab which he pulls. The apparent greater values and higher regular prices of some of said articles of merchandise as compared to the prices the customer will be required to pay in the event he secures said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise having greater values and higher regular prices than the designated prices to be paid therefor. The facts as to whether a purchaser of one of said pull card tabs receives an article of greater value than the price designated for same on said tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When a person or representative operating a pull card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the said sums to the respondent, the said respondent thereupon ships to said representative the merchandise sold by means of said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes various assortments of said merchandise and furnishes various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said pull cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of such merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a

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

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

PAR. 5. In the course and conduct of his business as hereinabove related, respondent has caused various false, deceptive, and misleading statements and representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Gifts or cash yours absolutely without cost.

How to get your gifts without any cost to you.

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the various States of the United States and in the District of Columbia, by inducing them to mistakenly believe that respondent gives away certain of his said articles of merchandise without cost to his said representatives.

PAR. 6. In truth and in fact, none of respondent's premiums or so-called gifts are given away "without cost," but said premiums or

so-called gifts which are represented as being "without cost" to said representatives are either purchased with labor by them, or the price of said premiums or so-called gifts is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called gifts can be procured by them.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and representations set forth herein, has had, and now has, the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as the result of such erroneous belief. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like or similar products who do not make such false, deceptive, and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 16, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Jack Salup, individually, and trading as Charlotte Novelty Co., charging him with the use of unfair methods of competition 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 before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondent), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial exami-

ner 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, Jack Salup, is an individual, trading under the name Charlotte Novelty Co., with his office and principal place of business located at 2631 Pennsylvania Avenue, Baltimore, Md. He is now and for a number of years last past has been engaged in the sale and distribution of various articles of merchandise, including among others, manicure sets, electric lamps, wallets, pictures, silverware, chinaware, clocks, watches, cameras, dolls, and cosmetic preparations.

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 Maryland 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 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 promoting the sale of his products, respondent has distributed advertising or sales circulars through the United States mails to prospective sales representatives located at various points throughout the United States. These circulars contained pictorial representations and descriptive matter with respect to certain articles of merchandise offered by respondent as compensation for the sale of his products, and also pictorial representations and descriptive matter as to certain of the articles of merchandise which respondent offered for sale.

Each of these circulars also contained what is commonly known as a pull card. This pull card consisted of a number of tabs, under each of which was concealed the name of one of the articles of merchandise offered for sale by respondent and the price thereof. Neither the name of the article nor the price thereof was disclosed to the pur-

chaser or prospective purchaser until after the tab had been separated or removed from the card. Adjacent to the pull tabs was a list of the articles of merchandise offered for sale and the price thereof, which corresponded with the names of the articles and the prices concealed under the various pull tabs. When a purchaser detached a tab and there was thus disclosed which article he was to receive and the price to be paid therefor, his name was written on the list opposite the particular article of merchandise.

Some of the articles of merchandise thus offered for sale had retail values greater than the prices designated for them, but all of the articles were distributed to the purchaser at the prices shown on the tabs. The fact that some of the articles had values in excess of the designated prices induced members of the public to pull the tabs in the hope that they would obtain such articles. Moreover, some of the articles offered for sale were represented through pictures and reading matter in the circular as having values greater than their actual value, which fact served as a further inducement to prospective purchasers to pull the tabs in an effort to obtain such articles. The specific article which the purchaser received, the amount of money he was required to pay for such article, and the question whether the purchaser received an article having an actual or apparent value greater than the price designated therefor were thus determined wholly by lot or chance.

When the individual operating the pull card had succeeded in selling all of the articles of merchandise listed under the tabs and had collected the respective amounts charged therefor, the total of such amounts was remitted to respondent. Upon receipt of such total amount, respondent shipped to his representative the merchandise sold, together with a premium for the representative as compensation for operating the pull card and selling and distributing the merchandise, such premium having been selected by the representative from articles pictured in the circular. If the representative so desired, he was permitted to deduct from the amount of money remitted a specified cash premium in lieu of the merchandise premium. Upon receipt of the merchandise from respondent, the representative delivered 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 appeared:

NOTICE TO PURCHASER.—On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article, pay the holder of this book the price shown on slip. If you do not want the article you need not buy it.

The Commission finds, however, that despite this notice the articles of merchandise were in fact sold and distributed by means of the pull card device in accordance with the sales plan or method described above. The record indicates that the notice was not ordinarily called to the attention of the prospective purchaser by the sales representative. Moreover, the successful operation of the sales plan was dependent upon the ability of the representative to sell all of the articles listed, so as to permit remittance of the required amount to respondent in order to obtain the merchandise purchased and in order for the operator to obtain the premium for the sale of the merchandise. It was only in exceptional cases that partial orders were forwarded to respondent by his sales representatives.

The record discloses no instance in which a person who pulled one of the tabs from the card refused to accept and pay for the merchandise designated on the tab. Moreover, in respondent's instructions to his representatives which appeared in the circular there was no direction as to what should be done in the event all of the articles of merchandise were not sold. The circular likewise failed to contain any information as to the premium or compensation which could be obtained by the representative in the event some of the purchasers refused to accept the article listed on the particular tab pulled. On the contrary, it is apparent from the instructions that the plan contemplated that all of the articles listed were to be sold. For example, the instructions contained the following:

Our plan is very simple and interesting. Just ask your friends and neighbors to pull one or more of the slips on the back page of this folder. On the back of each slip the name of a BIG BARGAIN article and its price is plainly marked. You collect from the purchasers the price stated on the slip for which they will receive the articles mentioned on the slip. Prices of these articles range from 8¢ to 39¢—none higher. When the articles are all sold you will have collected \$7.69. Then fill out the attached Order Blank and mail to us together with your remittance.

WHAT YOU WILL RECEIVE:

As soon as we will receive your order and money order for \$7.69, we will send your Big Premium or Combination Premium, your 2 Surprise Gifts, one for sending money order with order, and the other for sending the order promptly and the 22 articles you have sold, which you will then distribute to your friends.

The order blank referred to in these instructions read in part as follows:

After you have sold the 22 articles of merchandise and collected \$7.69, fill out this blank, stating the correct number of premium you have selected, also write your name and address plainly and mail to us.

CHARLOTTE NOVELTY CO.

Please ship at once, all charges prepaid, the 22 articles of merchandise I sold amounting to \$7.69 and the following premium.

The Commission therefore finds that, as a practical matter, the so-called notice to purchasers had no substantial effect upon the operation of the sales plan and that it did not serve to remove the lottery element from respondent's sales method.

PAR. 6. The persons to whom respondent furnished his pull card device used such device in selling and distributing respondent's merchandise in accordance with the sales plan or method herein described. Respondent thus supplied to and placed in the hands of others a means of conducting lotteries in the sale and distribution of his merchandise in accordance with such sales plan or method. Respondent's merchandise was thus sold and distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondent reaped the benefits therefrom. The use by respondent of this sales plan or method in the sale of his merchandise and the sale of such merchandise to the public by and through the use of such sales plan was a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 7. Among the individuals, partnerships, and corporations who sold and distributed merchandise in competition with respondent, as set forth in paragraph 3 hereof, were those who were unwilling to adopt and use the 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 was contrary to public policy, and such competitors refrained therefrom. Many persons were attracted by respondent's sales method and by the element of chance involved therein, and were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by those competitors of respondent who did not use the same or any equivalent method. The use of such method by respondent had the tendency and capacity to and did divert trade unfairly to respondent from such competitors.

PAR. 8. In addition to the foregoing acts and practices the respondent represented, through the use in his circulars of such legends as "Gifts or Cash Yours absolutely Without Cost" and "How to get your Gifts without any cost to you," that the articles of merchandise offered to his sales representatives were free and without cost to such representatives. These representations were deceptive and misleading. None of the articles of merchandise so designated was in fact given away free by respondent but all of such articles were sup-

plied to respondent's representatives only as compensation for services rendered in the sale of respondent's merchandise, and the price of such articles was included in the price of the other articles of merchandise which the representative was required to sell.

PAR. 9. The use by respondent of these deceptive and misleading representations had the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such articles of merchandise were given by respondent to his representatives free and without cost, and the tendency and capacity to cause such portion of the public to undertake the sale of respondent's merchandise in preference to the products of respondent's competitors. In consequence thereof, substantial trade was diverted unfairly to respondent from his 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 within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondent), 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, Jack Salup, individually, and trading as Charlotte Novelty Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of agents, distributors, or members of the public, pull cards or other lottery devices which are to be used or may be used in the sale or distribution of respondent's

Order

36 F. T. C.

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.

3. Using the word "gifts," or the words "without cost," or any other word or words of similar import, in connection with articles of merchandise which are furnished as compensation for services rendered in the sale or distribution of respondent's merchandise; or otherwise representing, directly or by implication, that any of respondent's merchandise is given free or without cost, when such is not the fact.

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

DUO-TINT BULB & BATTERY COMPANY, INC., ET AL.

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

Docket 4814. Complaint, Aug. 14, 1942—Decision, May 14, 1943

Where a corporation and three officers, directors and stockholders thereof, engaged in interstate sale and distribution of small glass incandescent electric light bulbs imported from Japan which had the word "Japan" stamped thereon when received in the United States—

- (a) Sold and distributed said bulbs assembled in boxes on perforated paste boards in such manner as to conceal from view the base or lower half on which was stamped "Japan", and with no marking to inform purchasers of said products' Japanese origin; and
- (b) Falsely represented that said bulbs were made in the United States, through printing on the boxes in which they were packed, and on display cards and in literature, the words "Filaments Made in U. S. A." and corporate name and Chicago address;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said bulbs, lacking the customary indication of foreign source, were wholly of domestic origin and manufacture, decidedly preferred by members of the purchasing public over those made in Japan or other foreign countries, with result of inducing purchase of said product, and with further result of placing in the hands of dealers means whereby they were enabled to mislead and deceive members of the purchasing public:

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Henry Junge, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Duo-Tint Bulb & Battery Co., Inc., a corporation, and Carrie Riggs and Helen Corts, individually, and as officers, directors and agents of said corporation, Duo-Tint Bulb & Battery Co., Inc., and Dalton W. Riggs, individually, and as president of said corporation, Duo-Tint Bulb & Battery Co., Inc., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

Complaint

36 F. T. C.

hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Duo-Tint Bulb & Battery Co., Inc., is a corporation, organized under the laws of the State of Illinois on September 16, 1932.

Respondent individuals, Dalton W. Riggs, Carrie Riggs, and Helen Corts are officers, directors and stockholders of respondent, Duo-Tint Bulb & Battery Co., Inc., and in control of the management, policies and operation of said corporation since the date of its organization in 1932, particularly in respect to the acts and practices hereinafter alleged. Prior to the organization of said corporation, Dalton W. Riggs, operated and controlled said business under the trade name Duo-Tint Bulb & Battery Co. The said respondents maintain offices and principal place of business at 4431 N. Racine Ave., Chicago, Ill.

PAR. 2. Respondent, Duo-Tint Bulb & Battery Co., Inc., is now, and has been, since the date of its organization, engaged in the business of selling and distributing small glass incandescent electric light bulbs and batteries. In the course and conduct of their said business, respondents sold said electric light bulbs and batteries to various distributors and retail dealers for resale and caused them, when sold, to be transported from their aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein respondents have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents import the aforesaid electric light bulbs from the country of Japan. When the bulbs are shipped from Japan to and received by respondents in the United States there is stamped thereon the word "Japan."

In the course and conduct of their business it has been and is the practice of respondents to assemble the electric light bulbs in boxes on perforated pasteboards in such manner as to conceal or hide from view of the prospective purchaser the base or lower half of the bulb on which the name "Japan" is stamped, and such electric light bulbs are then sold and distributed by the respondents in commerce as aforesaid without any marking thereon to inform members of the purchasing public that the bulbs are of Japanese or foreign origin.

PAR. 4. A further practice of respondents in connection with the sale and distribution of their electric light bulbs is the stamping or imprinting upon the boxes and display cards in which they are packed for shipment or on which they are placed for display and other literature legends and representations as follows:

Filaments Made in U. S. A.

Our batteries are built in exact accord with the Bureau of Standards electrical characteristics and specifications.

Duo-Tint Bulb & Battery Company, Inc.

4431-33 N. Racine Avenue

(Riggs Bldg.)

Chicago, Illinois.

thereby representing directly or by inference that such bulbs and batteries are manufactured or made in the United States and that such bulbs are wholly of domestic origin and manufacture rather than foreign origin and manufacture. In truth and in fact such bulbs are not of domestic origin and manufacture, as they are made in and imported by respondents from Japan.

PAR. 5. For many years last past there has been maintained among manufacturers in the United States an established custom and practice of marking products of foreign origin in such manner as to indicate that such products are in fact of foreign rather than domestic origin. The purchasing public is familiar with and relies upon such custom and practice, and when products bear no marking indicating that they are of foreign origin, the purchasing public assumes that such products are of domestic origin.

PAR. 6. There is among the members of the purchasing public a decided preference for products which are manufactured in the United States over products manufactured in Japan or other foreign countries.

PAR. 7. The practice of the respondent of obliterating, obscuring, or concealing the word "Japan" appearing on the base of electric light bulbs and of imprinting on the display cards the words "Duo-Tint Bulb & Battery Co., 4431-33 N. Racine Ave. (Riggs Building), Chicago, Ill." and of using on the boxes or cartons in which the bulbs are packed and offered for sale and in other literature the legend, "Filaments Made in U. S. A.," the words "Duo-Tint Bulb & Battery Co., Inc., Chicago, Ill.," and the words, "Our batteries are built in exact accord with Bureau of Standards electrical characteristics and specifications" has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' electric light bulbs and batteries are wholly of domestic origin and manufacture. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public is induced to and does purchase respondents' said products.

Through the practices herein set forth, the respondents place in the hands of unscrupulous or uninformed dealers a means and instrumentality whereby such dealers have been and are enabled to mislead

and deceive members of the purchasing public as to the source or origin of said bulbs and batteries.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the Federal Trade Commission Act, the Federal Trade Commission on August 14, 1942, issued and on August 17, 1942, served its complaint in this proceeding upon respondents, Duo-Tint Bulb & Battery Co., Inc., a corporation, and Carrie Riggs and Helen Corts, individually, and Dalton W. Riggs, individually, and trading as Duo-Tint Bulb & Battery Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of 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, Duo-Tint Bulb & Battery Co., Inc., is a corporation, organized under the laws of the State of Illinois on September 16, 1932.

Respondent individuals Dalton W. Riggs, Carrie Riggs, and Helen Corts are officers, directors, and stockholders of respondent, Duo-Tint Bulb & Battery Co., Inc., and in control of the management, policies, and operation of said organization since the date of its organization in 1932, particularly in respect to the acts and practices hereinafter set forth. Prior to the organization of said corporation Dalton W. Riggs operated and controlled said business under the trade name Duo-Tint Bulb & Battery Co. The said respondents maintain offices and principal place of business at 4431 North Racine Avenue, Chicago, Ill.

PAR. 2. Respondent, Duo-Tint Bulb & Battery Co., Inc., is now, and has been since the date of its organization, engaged in the business of selling and distributing small glass incandescent electric light bulbs and batteries. In the course and conduct of their said business respondents sell said electric light bulbs and batteries to various distributors and retail dealers for resale, and cause them, when sold, to be transported from their aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

At all times mentioned herein respondents have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents formerly imported their electric light bulbs from the country of Japan. When the bulbs were shipped from Japan to and received by respondents in the United States, there was stamped thereon the word "Japan."

In the course and conduct of their business it has been and is the practice of respondents to assemble the electric light bulbs imported from Japan in boxes on perforated pasteboards in such manner as to conceal or hide from the view of the prospective purchaser the base or lower half of the bulb on which the name "Japan" is stamped, and such electric light bulbs are then sold and distributed by the respondents in commerce as aforesaid without any marking thereon to inform members of the purchasing public that the bulbs are of Japanese or foreign origin.

PAR. 4. A further practice of respondents in connection with the sale and distribution of their electric light bulbs is the stamping or imprinting upon the boxes and display cards in which they are packed for shipment or on which they are placed for display, and in other literature, legends, and representations as follows:

Fillaments Made in U. S. A.
Duo-Tint Bulb & Battery Company, Inc.,
4431-33 N. Racine Avenue
(Riggs Bldg.)
Chicago, Illinois.

thereby representing directly or by inference that such bulbs are manufactured or made in the United States and that such bulbs are wholly of domestic origin and manufacture rather than foreign origin and manufacture. In truth and in fact, such bulbs are not of domestic origin and manufacture, as they are made in and imported by respondents from Japan.

PAR. 5. For many years last past there has been maintained among manufacturers in the United States an established custom and prac-

Order

36 F. T. C.

tice of marking products of foreign origin in such manner as to indicate that such products are in fact of foreign rather than domestic origin. The purchasing public is familiar with and relies upon such custom and practice, and when products bear no marking indicating that they are of foreign origin, the purchasing public assumes that such products are of domestic origin.

PAR. 6. There is among the members of the purchasing public a decided preference for products which are manufactured in the United States over products manufactured in Japan or other foreign countries.

PAR. 7. The practice of the respondents of obliterating, obscuring, or concealing the word "Japan" appearing on the base of electric light bulbs and of imprinting on the display cards the words "Duo-Tint Bulb & Battery Co., 4431-33 North Racine Ave. (Riggs Building)Chicago, Ill.," and of using on the boxes or cartons in which the bulbs are packed and offered for sale and in other literature the legend "Filaments Made in U. S. A." and the words "Duo-Tint Bulb & Battery Co., Inc., Chicago, Ill." has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' electric light bulbs are wholly of domestic origin and manufacture. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public is induced to and does purchase respondents' said products.

Through the practices herein set forth, the respondents place in the hands of dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public as to the source or origin of said bulbs and batteries.

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 matter coming on to be heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts;

749

Order

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, Duo-Tint Bulb & Battery Co., Inc., a corporation, and its officers, and Carrie Riggs and Helen Corts, individually, and Dalton W. Riggs, individually, and trading as Duo-Tint Bulb & Battery Co., or trading under any other name, 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 incandescent electric light bulbs or other products manufactured in whole or in part in Japan or any other foreign country, do forthwith cease and desist from:

1. Concealing, obliterating or removing the name Japan or the name of any other foreign country indicating the origin of respondents' products.

2. Using the words "Filaments made in U. S. A." or any other words of similar import in connection with electric light bulbs manufactured in Japan or any other foreign country.

3. Representing in any manner that electric light bulbs or other products manufactured in any foreign country are manufactured in the United States.

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

IN THE MATTER OF
ASSOCIATED DISTRIBUTORS, 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 4749. Complaint, June 30, 1942¹—Decision, May 18, 1943

Where a corporation and three individuals engaged in interstate sale and distribution of their "Chen Yu Nail Lacquer"—

- (a) Featured trade name "Chen Yu" on the bottles in which said product was sold and in advertisements thereof, together with purported Chinese letters or symbols, or depictions of Chinese art or objects;

With effect of misleading purchasers to believe that said lacquer was of Chinese origin, formula or manufacture, and with tendency and capacity, in the absence of a conspicuous statement that said product was made in the United States, to confuse them as to the actual country of origin; and

- (b) Falsely represented, in said advertisements in newspapers and periodicals and other matter, that said lacquer was incapable of chipping or flaking under all conditions of use;

With tendency and capacity to mislead a substantial portion of the purchasing public with respect thereto, and to cause it to purchase substantial quantities thereof as a result of the mistaken belief so engendered:

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

Mr. R. P. Bellinger for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Petit, Olin & Overmyer*, of Chicago, Ill., for respondents.

AMENDED COMPLAINT²

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Associated Distributors, Inc., a corporation, J. L. Younghusband, Paul Rowatt, and Douglas Walker, individuals, trading as Associated Distributors, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission, that a proceeding by it

¹ Amended.

² The amended complaint was further amended by an order of the Commission dated May 10, 1943, as follows:

This matter coming on to be heard by the Commission upon the stipulation as to the facts entered into by and between Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, and Associated Distributors, Inc., J. L. Younghusband, Paul Rowatt, and Howard A. Younghusband, and it appearing from said stipulated facts that J. L. Younghusband, Paul Rowatt, and Douglas Walker, individuals trading as Associated Distributors, were doing business as a partnership until August 31, 1942, upon which date Douglas Walker withdrew from the partnership, and it further appearing that on September

in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Associated Distributors, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of Illinois with its office and principal place of business located at 30 West Hubbard Street, in the city of Chicago, State of Illinois.

Respondents, J. L. Younghusband, Paul Rowatt, and Douglas Walker, are individuals, trading as Associated Distributors, with their principal place of business located at the same address as that of the corporate respondent shown above.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the sale and distribution of a cosmetic preparation designated as "Chen Yu Nail Lacquer" in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said cosmetic preparation, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetic preparation between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by United States mails, 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

1, 1942, Howard A. Younghusband became one of the partners trading as aforesaid and taking the place of Douglas Walker, and the Commission having duly considered such stipulated facts and the record herein and being now fully advised in the premises:

It is ordered, That the amended complaint herein be, and the same hereby is, further amended by naming Howard A. Younghusband, as an individual respondent, in lieu of Douglas Walker, and that this proceeding shall hereafter be styled "In the Matter of Associated Distributors, Inc., a corporation, J. L. Younghusband, Paul Rowatt, and Howard A. Younghusband, Individuals, trading as Associated Distributors."

It is further ordered, That this proceeding be, and it hereby is, closed as to the respondent, Douglas Walker, 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

36 F. T. C.

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 of and concerning said product contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

NEW BEAUTY FOR NAILS!

The Thrilling Colors and Breath-taking Luster of Priceless Lacquers from China

O CHIP-PROOF NAIL LACQUER

H

E An idea stolen from China—long-lasting LACQUER to beautify your finger-
N nails. LACQUER—CHEN YU Nail LACQUER—so resistant to chipping
and peeling you'll wonder—will it NEVER wear away?

Y Positively harmless too—will never prevent your nails from growing strong
U and long! Buy CHEN YU at all smart stores—or send coupon for trial
bottles of two shades (enough for at least 10 manicures).

O Chip-Proof

H Lacquer for Nails

E Translated from the Chinese * * * Remember * * * at the
N Museum * * * that breath-taking Chinese Lacquer—5000 years
old * * *? Now—at smart stores from coast to coast—that lacquer-
Y ing * * * borrowed for an amazing new nail make-up! Like its ancient
U predecessor * * * won't crack * * * amazingly resistant to chip-
ping * * * peeling * * * remains beautifully lustrous so long
you'll wonder * * * will it NEVER wear away.

The Chinese made lacquer that has kept its amazingly lustrous color for *hundreds of years*—without chipping or cracking. Chen Yu nail lacquer has that wonderful tendency to not chip or fade—and to remain lustrous, mirror-like and lovely no matter how busy your hands become.

In some instances the foregoing statements and representations appearing in advertisements, disseminated as aforesaid, are accompanied by Chinese letters or symbols or depictions of Chinese art or objects. The bottle container of said product also prominently displays the trade name "Chen Yu" and what purport to be Chinese letters or symbols.

PAR. 4. Through the use of the trade name "Chen Yu" and accompanying Chinese letters or symbols or depictions of Chinese art or objects, and the statements and representations published and disseminated as aforesaid, respondents represent and have represented that

"Chen Yu Nail Lacquer" is of Chinese origin, formula, or manufacture, and that said product is incapable of chipping or flaking, or that it offers effective resistance to cracking or peeling under all conditions of use.

PAR. 5. 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, respondents' said "Chen Yu Nail Lacquer" is not manufactured in nor imported from China. Said preparation is a domestic product made in the United States and bears no relationship whatsoever to any product of Chinese manufacture. Said preparation is not compounded from a formula of Chinese origin. Said "Chen Yu Nail Lacquer" is capable of chipping or flaking, and it does not offer effective resistance to cracking or peeling under all conditions of use.

PAR. 6. The use by respondents of said false advertisements containing the trade name "Chen Yu" and accompanying Chinese letters or symbols or depictions of Chinese art or objects, and the aforesaid statements and representations, pictorial and otherwise concerning their said product had, and has, the capacity and tendency to, and did and does, deceive and mislead purchasers and prospective purchasers into the erroneous and mistaken belief that said statements, representations, implications, and false advertisements are true.

PAR. 7. The 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, 1942, issued and subsequently served its amended complaint in this proceeding upon the respondents named therein, Associated Distributors, Inc., a corporation, and J. L. Younghusband, Paul Rowatt, and Douglas Walker, individuals, trading as Associated Distributors, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On July 20, 1942, the respondents filed their answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, and the respondents, Associated Distributors, Inc., J. L. Younghusband, Paul Rowatt, and Howard A. Young-

Findings

36 F. T. C.

husband (the last-named party having been substituted as a respondent in lieu of Douglas Walker), by their attorneys, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the amended complaint, answer, and stipulation (the stipulation having been approved and accepted by 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, Associated Distributors, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 30 West Hubbard Street, Chicago, Ill. While the corporation has not since July 30, 1941, been engaged in the business hereinafter described and has taken certain steps looking toward its dissolution, such dissolution proceedings have not yet been completed and the corporation is still a legally constituted corporate entity.

On August 1, 1941, the assets of the respondent corporation were transferred to J. L. Younghusband, the sole shareholder, and he continued as sole proprietor of the business under the trade name "Associated Distributors" until October 1, 1941. Subsequent to that date, various parties have held interests in the business along with J. L. Younghusband, but since September 1, 1942, the business has been a copartnership composed of J. L. Younghusband, Paul Rowatt, and Howard A. Younghusband. The office and principal place of business of the copartnership is located at 30 West Hubbard Street, Chicago, Ill.

PAR. 2. The individual respondents are now and since September 1, 1942, have been, and the corporate respondent for some time prior to July 30, 1941, was, engaged in the sale and distribution of a cosmetic preparation designated "Chen Yu Nail Lacquer." Respondents cause or during the periods of time herein mentioned have caused their preparation, when sold, to be shipped from their place of business in the

State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain or have maintained a course of trade in their preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their product, the respondents have disseminated and have caused the dissemination of advertisements concerning their product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their product by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in such advertisements, disseminated and caused to be disseminated by the United States mails, by insertion in newspapers and periodicals, and by circulars and other printed or written matter, were the following:

NEW BEAUTY FOR NAILS!

The Thrilling Colors and Breath-taking Luster
of Priceless Lacquers from China

CHIP-PROOF NAIL LACQUER

An idea stolen from China—long-lasting

LACQUER to beautify your fingernails.

LACQUER—CHIEN YU NAIL LACQUER—so resistant to chipping and peeling you'll wonder—will it NEVER wear away? Positively harmless too—will never prevent your nails from growing strong and long!

Buy CHIEN YU at all smart stores—or send coupon for trial bottles of two shades (enough for at least 10 manicures)."

Chip-proof

Lacquer for Nails

Translated from the Chinese * * * Remember * * * at the Museum * * * that breath-taking Chinese Lacquer—5000 years old * * * ? Now—at smart stores from coast to coast—that lacquering * * * borrowed for an amazing new nail make-up Like its ancient predecessor * * * won't crack * * * amazingly resistant to chipping * * * peeling * * * remains beautifully lustrous so long you'll wonder * * * will it NEVER wear away.

The Chinese made lacquer that has kept its amazingly lustrous color for *hundreds of years*—without chipping or cracking. Chien Yu nail lacquer has that wonderful tendency to not chip or fade—and to remain lustrous, mirror-like and lovely no matter how busy your hands become.

In some instances these statements and representations were accompanied by Chinese letters or symbols or by depictions of Chinese art or objects. The bottles in which the product is sold also display prominently the trade name "Chen Yu," together with markings which purport to be Chinese letters or symbols.

PAR. 4. Through the use of the trade name "Chen Yu" accompanied by Chinese letters or symbols or by depictions of Chinese art or objects, respondents have led purchasers and prospective purchasers of their product to believe that "Chen Yu Nail Lacquer" is of Chinese origin, formula, or manufacture. The use of the trade name "Chen Yu," when not accompanied by a conspicuous statement that the product is made in the United States, has a tendency and capacity to confuse purchasers and prospective purchasers as to the actual country of origin or manufacture. Through the use of the statements and representations set forth in paragraph 3 hereof, respondents have led purchasers and prospective purchasers to believe that "Chen Yu Nail Lacquer" is incapable of chipping or flaking, and that it offers effective resistance to cracking or peeling under all conditions of use.

PAR. 5. Respondent's "Chen Yu Nail Lacquer" is not manufactured in or imported from China, nor is the preparation compounded from a formula of Chinese origin. It is a domestic product made in the United States, and bears no relationship whatsoever to any product of Chinese manufacture. The preparation is capable of chipping or flaking, and does not offer effective resistance to cracking or peeling under all conditions of use.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their product, including the use of the unqualified name "Chen Yu" to designate such product, are misleading and deceptive.

Prior to the Commission's investigation of respondents' practices, their labels and advertising material did not disclose that the product was made in the United States, but since December, 1940, respondents have caused the statement "Made in U. S. A." to be printed on their labels and cartons and in their advertising material in connection with the name "Chen Yu."

PAR. 7. The use by respondents of these misleading and deceptive representations, including the use of the name "Chen Yu" when not accompanied by other words disclosing the origin of the product, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the origin and properties of respondents' product, and the tendency and capacity 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.

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 amended complaint of the Commission, the answer thereto, and a stipulation as to the facts entered into between the respondents 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Associated Distributors, Inc., a corporation, its officers, and J. L. Younghusband, Paul Rowatt, and Howard A. Younghusband, individually, and trading as Associated Distributors, or trading under any other name, and respondent's 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' cosmetic preparation designated "Chen Yu Nail Lacquer," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' preparation is incapable of chipping or flaking, or that said preparation effectively resists cracking or peeling under all conditions of use.

2. Using Chinese letters or symbols, or any simulation thereof, or any picturization of Chinese art or objects, in connection with the designation or description of respondents' preparation.

3. Representing, directly or by implication, that respondents' preparation is manufactured in or imported from China or any other foreign country, or that the formula from which said preparation is compounded is of Chinese or other foreign origin.

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

Complaint

36 F. T. C.

IN THE MATTER OF

JOHN F. EBERHARD, WALTER J. KEAVNEY, AND
EDMUND DIAZCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4639. Complaint, Nov. 21, 1941—Decision, May 24, 1943*

Where three individuals, operating over a period of years through different corporations which successively became insolvent; engaged directly and through salesmen in securing signatures to contracts providing for the purchase of magazine subscriptions and scientific books, both selected by the purchaser from the list furnished, at specified combination or group prices—

- (a) Represented that purchasers under any of their combination or group offer plans would receive the books, magazines, and periodicals listed in such plan upon payment of the purchase price;
- (b) Represented that various books or magazines were given free to purchasers with their combination or group offer plans; and
- (c) Represented that the scientific books concerned were original, standard, unabridged editions expensively bound and printed, and worth at least \$6 a volume;

When in fact it was their frequent practice to collect the subscription price without making remission to the publishers of the periodicals requested, with the result that purchasers failed to receive any magazine or, in some instances, received only part of their selection, or other periodicals than those ordered; items which they represented as being free were in fact usually included by them in their group offers, the price being thus actually included in the regular price for the particular combination; and the scientific books in question were not original, standard, unabridged editions, and worth said amount, but were monographs or condensed articles by the authors named, printed on cheap paper and cheaply bound;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and to induce it, because of such mistaken belief, to purchase their books and magazines offered as aforesaid:

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

Before *Mr. Webster Ballinger*, trial examiner.

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that John F. Eberhard, Walter J. Keavney, and Edmund Diaz, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect

thereof would be in the public interest, hereby issues its complaint, stating its charges in this respect as follows:

PARAGRAPH 1. Respondent, John F. Eberhard, is an individual, residing at 148 Marcellus Road, Mineola, Long Island, N. Y.

Respondent, Walter J. Keavney, is an individual, whose business address is in care of the Transportation and Express Department of Time, Inc., 330 East Twenty-second Street, Chicago, Ill.

Respondent, Edmund Diaz, is an individual, doing business under the style and trade name of Physicians' Circulation Service with his principal place of business located at 11 West Forty-second Street, New York, N. Y.

PAR. 2. From October 1932 to July 1937, the Cyclopedia Corporation of America was actively engaged in selling and distributing certain combination or club offers consisting of scientific books and subscriptions to various magazines and periodicals, maintaining offices at 120 West Forty-second Street in the city of New York, N. Y. Although not originally members of this corporation, respondents, John B. Eberhard and Walter J. Keavney, prior to the year 1937, became associated with, and eventually took over, the entire business of this corporation. In 1937, due to financial difficulties, the corporation was forced to submit to its creditors a reorganization plan under the bankruptcy act. That plan was accepted by the creditors and resulted in the organization of the Professional Circulation Co., Inc., which took over the business formerly conducted by the Cyclopedia Corporation of America. Respondents, John F. Eberhard and Walter J. Keavney, together with respondent Edmund Diaz, were actively engaged in the operation of the Professional Circulation Co., Inc. In 1938, the Professional Circulation Co., Inc., made an assignment for the benefit of its creditors, and thereafter John F. Eberhard, Walter J. Keavney, and Edmund Diaz, as individuals, continued to operate the same business under the style and trade name of Professional Sales Corporation until the latter part of 1939, with their principal office and place of business located at 55 West Forty-second Street, New York, N. Y.

Respondents have acted in conjunction and in cooperation with each other, in performing the acts and practices hereinafter set forth.

PAR. 3. Acting in their individual capacities and as officers and representatives of the Cyclopedia Corporation of America prior to 1937, of the Professional Circulation Co., Inc., from 1937 to 1938, and trading under the style and firm name of Professional Sales Corporation until the latter part of 1939, respectively, respondents have engaged in the sale and distribution in commerce of scientific books, magazines, and periodicals under "Selected Group Offers" and have caused such

books and magazines, when sold, to be transported from the publisher's place of business to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia.

Respondents at all times mentioned herein have maintained a course of trade in said books and magazines 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 the aforesaid business, as aforesaid, respondents have engaged in the practice of representing: that purchasers of any of respondents' "Selected Group Offers" would receive the books and magazines listed in such "Selected Group Offers" upon the payment of the purchase price; that various books or magazines were given free to purchasers of respondents' various "Selected Group Offers"; that the books sold and distributed by respondents in or with the various "Selected Group Offers" were original, standard, unabridged editions, expensively bound and printed, and worth at least \$6 a volume; that the price at which respondents were offering their "Selected Group Offers" was less than the price usually charged by respondents for such "Selected Group Offers." The respondents have further represented as the publisher's regular price, for subscriptions to the various magazines listed in respondents' "Selected Group Offers," a sum larger than is actually charged by the publishers for such subscriptions.

PAR. 5. The foregoing representations, and others of a like nature but not specifically set out herein, were false and misleading. Purchasers of the various "Selected Group Offers" did not receive the magazines selected and paid for, but in many instances failed to receive any magazines and in many other instances received only a part of their selection, or magazines other than those selected. Respondents did not give either books or subscriptions to magazines free with any of the various "Selected Group Offers" listed in their contracts. The list of items comprising each "Selected Group Offer" included such so-called free goods and the various "Selected Group Offers" so listed were regularly and customarily offered for sale and sold by the respondents at the price set forth in said contracts and the price of the so-called free goods, represented by respondents as belonging to or accompanying any particular "Selected Group Offer," whether books or subscriptions to magazines, was actually included in and made a part of the price regularly and customarily charged by respondents for that particular "Selected Group Offer" and set forth in respondents contracts as such. The books sold and distributed by the respondents were not original, standard, unabridged editions, but were monographs or condensed articles by the authors named and were not ex-

pensively bound or printed, and were not worth \$6 a volume, but were cheaply bound and printed on a cheap grade of paper.

PAR. 6. The use by respondents of the foregoing, false, deceptive, and misleading representations, and others of a like nature, but not specifically set out herein, has had the tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' "Selected Group Offers" of books and magazines.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 21st day of November 1941 issued and subsequently served its complaint in this proceeding upon the respondents, John F. Eberhard, Walter J. Keavney, and Edmund Diaz, individuals, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answer thereto by respondent Edmund Diaz (the remaining respondents not having filed an answer), 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 respondents or oral argument requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, John F. Eberhard, is an individual, residing at 148 Marcellus Road, Mineola, Long Island, N. Y. Respondent, Walter J. Keavney, is an individual, whose business address is in

care of the Transportation and Express Department of Time, Inc., 330 East Twenty-second Street, Chicago, Ill. Respondent, Edmund Diaz, is an individual, doing business under the trade name of Physicians' Circulation Service, with his principal place of business located at 11 West Forty-second Street, New York, N. Y.

PAR. 2. During the periods of time hereinafter mentioned, the respondents, individually and as officers and representatives of corporations hereinafter described, have been engaged in the sale and distribution of scientific books, magazines, and periodicals by means of various combination or group offer plans whereby the respondents offered to purchasers and prospective purchasers a combination subscription to several magazines and periodicals, to be selected by the purchaser from a list of popular and scientific magazines and periodicals submitted by the respondents, together with the delivery by the respondents of one or more scientific books at a combination price designated by the respondents. Respondents have caused such books, magazines, and periodicals, when sold, to be transported from respondents' places of business in the State of New York and from the publishers' places of business to purchasers thereof located in various States of the United States other than the State of New York and the States in which the places of business of the publishers of said scientific books, magazines, and periodicals were located. Respondents, at all times mentioned herein, have maintained a course of trade in said books, magazines, and periodicals in commerce among and between the various States of the United States.

PAR. 3. In 1933 respondents, John F. Eberhard, Walter J. Keavney, and Edmund Diaz, became associated with a corporation known as Cyclopedia Sales Corporation, which corporation was engaged in the sale and distribution of scientific books, magazines, and periodicals by means of certain combination or group offer plans. In 1934 the name of the corporation was changed to Cyclopedia Corporation of America, and thereafter John F. Eberhard and Walter J. Keavney, as president and vice president, respectively, acquired all the stock of the corporation and were the sole operating officials. Respondent, Edmund Diaz, was district sales manager and salesman for said corporation.

The methods of doing business adopted by the respondents in operating the Cyclopedia Corporation of America were substantially the same as those followed by respondents in operating the subsequent organizations hereinafter described. The usual and customary method of doing business was for the respondents, both directly and through salesmen, to induce purchasers to sign contracts providing for the pur-

chase of several subscriptions to various popular or scientific magazines or periodicals, together with the purchase of certain scientific books at specified combination or group prices, all of which books, magazines, and periodicals were selected by the purchaser from lists furnished by the respondents. Such contracts provided for a part payment in cash with the order, a second payment upon delivery of the scientific books, and final payment upon receipt of bill from the respondents. The moneys so received from said contracts were placed in the general fund of the corporation, from which were paid the expenses of the administration of the business and the amount due publishers for the subscription price of the various magazines and periodicals requested by the purchasers.

The Cyclopedia Corporation of America was unable to fill a large number of contracts with its subscribers and in 1937 said Cyclopedia Corporation of America became insolvent and offered its creditors a reorganization plan under Section 77 (b) of the Bankruptcy Act. The creditors accepted the plan, which resulted in the organization of a corporation known as the Professional Circulation Co., Inc., with respondents, John F. Eberhard and Walter J. Keavney as sole owners and officers, and respondent, Edmund Diaz, as sales manager and salesman. The Professional Circulation Co., Inc., took over all the assets and business of Cyclopedia Corporation of America and continued to conduct, in the same manner and with the same sales force, the sale of various magazines, periodicals, and scientific books under the same combination or group offer plan.

In 1938 the Professional Circulation Co., Inc., became insolvent and was unable to meet its obligations or fulfill its contracts with its subscribers and failed to remit the subscription price to the publishers of the various magazines requested by such subscribers, and respondents, John F. Eberhard and Walter J. Keavney, as officers of said corporation, executed an assignment for the benefit of creditors to one Percy Croce, who proceeded, as assignee, to liquidate the assets of the corporation.

Immediately after the execution of said assignment for the benefit of creditors, the respondents, John F. Eberhard and Edmund Diaz organized a new corporation known as Professional Sales Corporation. Respondent, Edmund Diaz, was designated as secretary of said corporation. There is some question in the record as to whether the organization of the Professional Sales Corporation was fully completed as a corporation, but in any event respondent, John F. Eberhard, as sole owner, and respondent, Edmund Diaz, as sales manager, continued to operate said business and to sell scientific books, magazines, and

periodicals under the same combinations or group offer plan previously used by the respondents as hereinbefore described. Respondent, John F. Eberhard, continued to operate under the name Professional Sales Corporation until about August 1939, at which time he again became unable to meet his obligations or to fulfill the contracts with the purchasers of his combination or group offer plans and again made an assignment for the benefit of creditors. Shortly prior to this, in March 1939, respondent, Edmund Diaz, resigned his position as sales manager and discontinued his connection with the respondent, John F. Eberhard.

PAR. 4. In the course and conduct of their business as hereinbefore described and during the times hereinbefore mentioned, the respondents engaged in a practice of representing to purchasers and prospective purchasers:

1. That purchasers of scientific books, magazines, or periodicals under any of respondents' combination or group offer plans would receive the books, magazines, and periodicals listed in such plan upon payment of the purchase price.

2. That various books or magazines were given free to purchasers in or with respondents' various combination or group offer plans.

3. That the scientific books sold and distributed by the respondents in or with the various combination or group offer plans were original, standard, unabridged editions expensively bound and printed and worth at least \$6 a volume.

PAR. 5. The foregoing representations were false, deceptive, and misleading. It has been the practice of the respondents from time to time and on many occasions to collect the subscription price for the magazines and periodicals listed in their combination or group offers without remitting such subscription price or any part thereof to the publishers of the magazines requested, with the result that such purchasers have failed to receive any magazine or periodical or in some instances only part of their selection, or magazines and periodicals other than those ordered. Respondents did not give either scientific books or subscriptions to any magazine or periodical free with, or as a part of, any combination or group offer. The items which the respondents and their salesmen have represented as being free were in fact usually and customarily included by the respondents in their various combination and group offer plans for the price set forth in respondents' contracts, and the price of such so-called free items was actually included in, and made a part of, the price regularly and customarily charged by respondents for the particular combination or group offer. The scientific books sold and distributed by the respond-

ents were not original, standard, unabridged editions, but were monographs or condensed articles by the authors named, and were not expensively bound or printed and were not worth \$6 a volume, but were cheaply bound and printed on a cheap grade of paper.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading representations and others of similar nature not specifically set out herein has had the tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' selected group offers of books and magazines.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent, Edmund Diaz, testimony and other evidence in support of and in opposition to the allegations of said 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 in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, John F. Eberhard, Walter J. Keavney, and Edmund Diaz, individuals, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of scientific books, magazines, periodicals, or other similar publications in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that purchasers of books, magazines, or periodicals sold by the respondents, or any of them, will receive the books, magazines, or periodicals selected, upon payment of the purchase price, when such purchasers do not receive any of such books, magazines, or periodicals or receive books, magazines, or periodicals other than those selected by such purchasers or receive only part of such selection.

Order

36 F. T. C.

2. Representing that purchasers of subscriptions to magazines or periodicals offered by the respondents, or any of them, will receive the magazines or periodicals so selected, upon payment of the purchase price, when the respondents do not remit the subscription price to the publishers or distributors of the magazines or periodicals selected so that the name of such purchaser can be entered as a subscriber to the magazine or periodical selected.

3. Representing that any book, magazine, or periodical is given free to purchasers, which is regularly included in a combination offer with other books, magazines, or periodicals and the price of such item, represented as being free, is included in and made a part of the price regularly and customarily charged for the particular combination offer.

4. Representing that any book offered for sale by the respondents, or any of them, is an original, standard, or unabridged edition, or that it is expensively bound and printed when such book is a monograph or condensed article cheaply bound and printed on a cheap grade of paper.

5. Representing as the customary or regular price or value of any of respondents' books, any price or value which is in fact in excess of the price at which said books are customarily offered for sale and sold in normal and usual course of business.

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

Syllabus

IN THE MATTER OF

NEO GRAVURE PRINTING CO., 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 4781. Complaint, July 9, 1942—Decision, May 24, 1943

Where (1) a corporation which maintained a printing establishment equipped for rotogravure printing of magazine sections for periodicals and catalogs; (2) two other corporations which had long engaged as exporters and importers doing business with foreign buyers and sellers in foreign countries, one particularly in Central America and the West Indies; and (3) an individual associated with them in the interstate sale of "Manufacturers' Displays" for "Export Catalogs" to manufacturers of numerous types of merchandise; engaged in the interstate sale to such manufacturers of such "Displays" and in maintaining a course of interstate and foreign trade therein and in the "Export Catalogs" which they compiled therefrom, some of which bore the name of one or the other of said export concerns;

By means of letters and the solicitation of said individual in cooperation with the others, and through salesmen working under his direction and by other means—

- (a) Represented and implied to American manufacturers that a definite demand existed from foreign customers of said export concerns for the merchandise made by the manufacturers whose "Displays" were accepted for insertion in their "Export Catalogs," and that such manufacturers would have good reason to expect that said concerns would each purchase from them for their foreign customers a considerable quantity of merchandise;
- (b) Represented that said export concerns' "Export Catalogs" were permanent catalogs, constituted a valuable sales help to their representatives in the more important foreign-trade centers and an important feature in their established and usual methods of securing business, and that use thereof had resulted in an important part of their foreign sales of American merchandise;
- (c) Represented that the business operations of said export concerns were dependent upon foreign business received by them through the use of their "Export Catalogs" containing "Displays" of American merchandise and that the insertion by manufacturers of their displays in said catalogs, and their furnishing of price lists and descriptive material ordinarily used in the sale thereof, would enable said concerns to sell such merchandise to their foreign customers, and that such an arrangement would act as an economical means to said manufacturers of securing profitable foreign business;

The facts being that no foreign market or demand existed or was likely to exist for any of the merchandise concerned; and such "Export Catalogs" were in no sense permanent, were not a feature in their established and usual method of procuring business, and played no essential part in their foreign sales of American merchandise, but the cooperative arrangement in question was entered into solely to make a profit from the sale of the printed advertising matter concerned;

- (d) Represented that the money required to be paid by the manufacturers pursuant to agreements covering the insertion of their "Displays" in said "Ex-

Complaint

36 F. T. C.

port Catalogs" was to pay for the work performed by said printing establishment in the printing of 25,000 copies of the displays for binding in the export catalogs of said export concerns, and that latter would pay the cost of lay-out, translations, copy, binding, covers, addressing, and postage incident to the compilation, publication, delivery, and distribution abroad of said number of copies of an "Export Catalog" containing the displays, with part of the number to be bound as the "Export Catalog" of one of said export concerns and the balance as that of the other, and, after the withdrawal of one, with the entire 25,000 to be issued as the "Catalog" of the remaining concern;

The facts being that said printing concern required only a part of the money paid by the American manufacturers to cover its printing charges, said export concerns retained a considerable part thereof to pay the cost of lay-outs, translations, copy, binding, covers, addressing, and postage incident to publication, compilation, delivery, and distribution of said catalogs—the export concerns bearing none of said costs, as claimed—part was given to said individual as a commission for obtaining said agreements; and a considerable portion was also paid to one of said export corporations for permitting publication of said "Export Catalog" under its name; and

- (e) Falsely represented that said individual, and "M. A. Crews Co.," and "Pioneer Exporters"—trade names used by him—were connected with a department of such export concerns, and that such department constituted a useful and practical facility in the making of sales abroad of American merchandise through their respective foreign sales organizations;

When in fact his only connection with either concern or any department thereof was in the sale of said "Manufacturers' Displays" and in the issuance of said "Export Catalogs";

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that aforesaid representations and implications were true, and of causing them, as a result, to purchase aforesaid displays:

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.

Burns, Currie & Walker, of New York City, for Neo Gravure Printing Co., Inc., Cuneo Press, Inc., Eggers & Heinlein, Inc., and Middleton & Co., Ltd.

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 Neo Gravure Printing Co., Inc., a corporation; Cuneo Press, Inc., a corporation; Eggers & Hein-

¹ The Commission dismissed the complaint as to Cuneo Press, Inc., by an order dated September 11, 1942, as follows:

This matter coming on to be heard by the Commission upon the record herein, and the Commission having duly considered the matter;

It is ordered, That the complaint herein be, and the same hereby is, dismissed as to Cuneo Press, Inc., without prejudice.

lein, Inc., a corporation; Middleton & Co., Ltd., a corporation; Marcus A. Crews, an individual, trading as M. A. Crews Co., and as Pioneer Exporters, 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 Neo Gravure Printing Co., 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 601 West Twenty-sixth Street, New York, N. Y.

Respondent, Cuneo Press, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business on West Cermak Road at South Canal Street, Chicago, Ill.

Respondent, Eggers & Heinlein, 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 44 Whitehall Street, New York, N. Y.

Respondent, Middleton & Co., Ltd., 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 80 Broad Street, New York, N. Y.

Respondent, Marcus A. Crews, is an individual, trading as M. A. Crews Co., and as Pioneer Exporters, with his principal office and place of business at Lawrenceburg, Tenn.

PAR. 2. Respondent, Neo Gravure Printing Co., Inc., now maintains, and for several years last past has maintained, a printing establishment in the State of New York, equipped for the printing of magazines and catalogs. Said respondent is a subsidiary and under the control of the respondent, Cuneo Press, Inc.

Respondent, Cuneo Press, Inc., is now engaged, and for several years last past has been engaged, in the printing business.

Respondent, Eggers & Heinlein, Inc., is now engaged, and for many years last past has been engaged in business, as an exporter and importer, and now acts, and for many years last past has acted, as an export and import commission merchant doing business with foreign buyers and sellers located in foreign countries and particularly in Central America and the West Indies.

Respondent, Middleton & Co., Ltd., is now engaged, and for many years has been engaged, in business, as an exporter, and now acts, and for many years has acted, as an export commission merchant doing business with foreign buyers located in various foreign countries.

Complaint

30 F. T. C.

Respondent, Marcus A. Crews, is now engaged, and for several years last past has been engaged, in association with printers and exporters, in the sale of printed advertising matter, sometimes called "Manufacturers' Displays," suitable for insertion in catalogs, sometimes called "Export Catalogs," to manufacturers of numerous types of merchandise located in various States of the United States and in the District of Columbia.

Respondents are now engaged, and for more than 2 years last past have been engaged, in the sale of printed advertising matter, sometimes called "Manufacturers' Displays," suitable for insertion in catalogs, sometimes called "Export Catalogs," to manufacturers of numerous types of merchandise located in various States of the United States and in the District of Columbia.

A "Manufacturers' Display," as thus referred to, consists of printed advertising matter, describing and illustrating merchandise manufactured by an American manufacturer, printed on a sheet of paper suitable for insertion in, and as a part of, or section of, an "Export Catalog." An "Export Catalog," as thus referred to, consists of the "Displays" of a number of different American manufacturers, printed as aforesaid, which have been bound together in the form of a booklet with a cover bearing the name of an exporter and other material showing such booklet to be the catalog of such exporter.

Said various pieces of printed advertising matter, sometimes called "Manufacturers' Displays," upon being printed and sold by respondents, have been transported by respondents from the place in which they are printed in the State of New York to other places outside of the State of New York, located in various States of the United States, in the District of Columbia, and in foreign countries. "Export Catalogs," compiled as aforesaid, some bearing the name of the respondent, Eggers & Heinlein, Inc., and some bearing the name of the respondent, Middleton & Co., Ltd., have been transported by respondents from the place in which they have been compiled in the State of New York to other places outside the State of New York, located in various States of the United States, in the District of Columbia, and in foreign countries. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said "Manufacturers' Displays" and in said "Export Catalogs" in commerce among and between the various States of the United States, in the District of Columbia, and between the State of New York and various foreign countries.

PAR. 3. In the course of the sale, offering for sale and distribution by the respondents, Neo Gravure Printing Co., Inc., Cuneo Press, Inc., Eggers & Heinlein, Inc., Middleton & Co., Ltd., and Marcus A. Crews,

of printed advertising matter, referred to by them as "Manufacturers' Displays" and as "Displays," as printed on various sheets of paper, and as compiled in catalogs, sometimes referred to by them as "Export Catalogs," as hereinbefore mentioned, said five respondents, by means of letters transmitted by United States mails, by and through the solicitation of the respondent, Marcus A. Crews, in cooperation with said other four respondents, and by and through salesmen working under his direction, and by various other means, have, directly and indirectly, made to American manufacturers, in order to induce them to purchase said printed advertising matter, representations and implications, typical of which are the following:

1. That a definite demand existed from the foreign customers of each of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., for the merchandise made by the American manufacturers whose "Displays" were accepted for insertion in the "Export Catalogs" of said respondents.

2. That the American manufacturers whose "Displays" were inserted in the respective "Export Catalogs" of respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would have good reason to expect that said respondents would each purchase for their foreign customers a considerable quantity of the merchandise of said manufacturers.

3. That the "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., containing "Displays" of American manufacturers, were each permanent catalogs; that each constituted and would be a valuable sales help to their foreign representatives living in the more important trade centers abroad; that each of such catalogs, as used by said respondents and their foreign representatives, was an important feature in their established and usual method of securing foreign business; and that the use of such catalog had resulted in the consummation of an important part of the sales of each of said respondents of American merchandise to their foreign customers.

4. That the operation of the business of each of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., had been, and was, dependent upon foreign business received by them through the use of their "Export Catalogs" containing "Displays" of merchandise made by American manufacturers.

5. That the insertion by American manufacturers of their "Displays" in the respective "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., and the furnishing by them to said respondents of their price lists and the descriptive material ordinarily used by them in the sale of their merchandise, would enable said respondents to sell the merchandise of said manufacturers directly abroad to the respective foreign customers of said respondents; that such arrangement would act as an economical means to said manufacturers of securing foreign business and result in profit to them.

6. That the money required to be paid by the manufacturers pursuant to agreements entered into by them covering the insertion of their "Displays" in the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and in the "Export Catalog" of the respondent, Middleton & Co., Ltd., was for the purpose of paying to the respondent, Neo Gravure Printing Co., Inc., its ordinary and reasonable charges for the work performed by said last named respondent in the printing of 25,000 copies of the "Displays" of such manufacturers suitable for binding in the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and in the "Export Catalog" of the respondent, Middleton & Co., Ltd.

Complaint

36 F. T. C.

7. That the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would pay the cost of lay-outs, translations, copy, binding, covers, addressing, and postage incident to the publication, compilation, delivery, and distribution abroad, of 25,000 copies of an "Export Catalog" containing the "Displays" of the manufacturers entering into agreements for the insertion of their "Displays" in said catalog, a part of said number of copies to be bound as the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and the balance of said copies to be bound as the "Export Catalog" of the respondent, Middleton & Co., Ltd.

8. That Marcus A. Crews, and M. A. Crews Co., and Pioneer Exporters, trade names used by the respondent, Marcus A. Crews, were connected with a department of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., and that such department constituted a useful and practical facility in the making of sales abroad of American merchandise through the respective foreign sales organizations of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd.

PAR. 4. The representations and implications contained in paragraph 3 aforesaid were made, as aforesaid, by all of the respondents for a period of time, and from time to time, prior to the early part of 1940. Early in 1940 the respondent, Middleton & Co., Ltd., withdrew from the cooperative arrangement which the respondents had, as aforesaid, for the selling of printed advertising matter, hereinbefore called "Manufacturers' Displays," and for the issuance, as aforesaid, of "Export Catalogs." Thereafter, the remaining respondents continued said arrangement, and thereafter continued to make the representations and implications contained in paragraph 3, except that thereafter no mention was made by said remaining respondents of Middleton & Co., Ltd., its name, or its "Export Catalogs." Thereafter, it was represented that there would be issued 25,000 copies of the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., containing the "Displays" of the American manufacturers entering into agreements for the insertion of their displays in said catalog.

PAR. 5. There is no basis in fact for any of the representations set out and referred to in paragraphs 3 and 4 above. Said representations and implications and others of similar import and meaning were used by respondents to induce, and did induce, a large number of American manufacturers, to believe that the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would be able to sell, and would sell, to their foreign customers, large quantities of the merchandise made by each of the manufacturers whose "Displays" were inserted in the "Export Catalogs" of said last-named respondents. As a result of the belief thus engendered, a large number of American manufacturers were induced to pay, and did pay, to the respondent, Neo Gravure Printing Co., Inc., large sums of money, and to expend, and did expend, additional large sums of money, in connection with agreements entered into by them covering the printing of their "Dis-

plays" for insertion in said "Export Catalogs." They were also thus induced to commission, and did commission, said respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., to sell their merchandise abroad. All of said representations and implications were, and are, grossly exaggerated, deceptive, false, and misleading.

The truth is that, at the times that such representations and implications were made as aforesaid, no foreign market or demand existed, or was then likely to exist, for any of the merchandise made by many of the American manufacturers whose "Displays" were accepted for insertion in the "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd. Much of the merchandise described in the "Displays" inserted in said catalogs has not, at any time heretofore mentioned, been salable abroad, as no foreign market or demand has existed for said merchandise. Neither of said last-named respondents has had any foreign customers to whom any amount of the merchandise of said American manufacturers could be sold.

The business of each of said last-named respondents was, at all times heretofore, so organized and operated that any and all of the representations and implications, made as aforesaid, which were likely to lead the American manufacturers whose "Displays" were accepted for insertion in said "Export Catalogs" to expect that said respondents, or either of them, would purchase for their foreign customers any appreciable amount of the merchandise of any of said manufacturers, were grossly deceptive. Said "Export Catalogs" were in no sense permanent catalogs which could be used permanently by said last-named respondents and were not susceptible of being used as an effective sales help by their foreign representatives or as a workable feature in the established and usual method of securing foreign business followed by said last-named respondents. The use of such a catalog by said last-named respondents was not likely to result and has not resulted, in the consummation of any material part of the sales abroad of American merchandise by either of said last-named respondents.

The fact is that "Export Catalogs" containing "Manufacturers' Displays" do not play, and have never played, an essential part in the making of sales abroad of American merchandise by either of said last-named respondents or by their respective foreign representatives. Such catalogs have been of no practical value as sales aids to the foreign representatives of said respondents. The business of neither of said respondents has ever been dependent upon the use of such a catalog.

The truth is that the money which the American manufacturers paid to the respondent, Neo Gravure Printing Co., Inc., pursuant to agreements entered into by them covering the insertion of their "Displays"

in said "Export Catalogs" of the respondents, Eggers & Heinlein, Inc. and Middleton & Co., Ltd., was not used solely for the purpose of paying to the respondent, Neo Gravure Printing Co., Inc., its ordinary and reasonable charges for the work performed by it in the printing of said "Displays." Only a part of such money was required by said respondent to cover its charges for such printing. Said respondent retained a considerable part of said money to pay the cost of lay-outs, translations, copy, binding, covers, addressing, and postage incident to the publication, compilation, delivery, and distribution abroad of the "Export Catalogs" containing said "Displays." A part of said money was given to the respondent, Marcus A. Crews, as a reward or commission for the obtaining by him and by the salesmen working under his direction of said agreements of said American manufacturers. A considerable portion of said money was also paid to the respondent, Eggers & Heinlein, Inc., as a reward or commission for permitting the publication of said "Export Catalog" under its name. Likewise, in cases where said "Export Catalog" was issued as aforesaid under the name of the respondent, Middleton & Co., Ltd., said respondent received a considerable portion of said money for permitting said catalog to be published under its name. Neither the respondent, Eggers & Heinlein, Inc., nor the respondent, Middleton & Co., Ltd., paid any of the costs incident to the publication, compilation, delivery, and distribution abroad of any of said "Export Catalogs" or the costs of any layouts, translations, copy, binding, covers, addressing, or postage incident thereto.

In truth and in fact the cooperative arrangement entered into by the respondents aforesaid under which sales were made of said printed advertising matter, hereinbefore called "Manufacturers' Displays," was entered into and carried out by said respondents, for the purpose of making a profit from the sale of such "Displays" and not for the purpose of making it possible, through the use of "Export Catalogs" containing such "Displays," or otherwise, to sell abroad the merchandise manufactured by the American manufacturers to whom said printed advertising matter was sold. Each representation, made as aforesaid, which indicated that the latter purpose was the purpose of such arrangement was nothing but a pretext and a false pretense to induce the purchase of said "Displays." The fact is that the only connection which the respondent, Marcus A. Crews, has ever had with either of the respondents, Eggers & Heinlein, Inc., or Middleton & Co., Ltd., or any department of said respondents, has been in the sale of said "Manufacturers' Displays" and in the issuance of said "Export Catalogs."

PAR. 6. The use by the respondents of the acts and practices hereinabove mentioned in connection with the sale, offering for sale and distribution of "Manufacturers' Displays" and "Export Catalogs" in commerce, as hereinbefore set out, 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 the representations and implications aforesaid are true, when, in fact, they are not true, and cause many members of the purchasing public, because of said mistaken and erroneous belief, to purchase said "Manufacturers' Displays."

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 9th day of July, A. D. 1942, issued and thereafter served its complaint in this proceeding upon the respondents, Neo Gravure Printing Co., Inc., a corporation; Cuneo Press, Inc., a corporation; Eggers & Heinlein, Inc., a corporation; Middleton & Co., Ltd., a corporation; and Marcus A. Crews, an individual, trading as M. A. Crews Co. and as Pioneer Exporters, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, the respondents, Eggers & Heinlein, Inc., Middleton & Co., Ltd., and Marcus A. Crews, filed answers in this proceeding. On September 11, 1942, the Commission entered its order dismissing, without prejudice, the complaint against the respondent, Cuneo Press, Inc. Thereafter stipulations were entered into with the remaining respondents whereby it was stipulated and agreed that statements of facts signed and executed by Burns, Currie & Walker, counsel for the respondent, Neo Gravure Printing Co., Inc. and by the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., through their respective presidents, and by the individual respondent, Marcus A. Crews, 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 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, said respondents expressly waiving the filing of report upon the evidence of the trial examiner.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulations, said stipulations 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.

FINDINGS AS TO THE FACTS

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

The respondent, Eggers & Heinlein, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 44 Whitehall Street, New York, N. Y.

The respondent, Middleton & Co., Ltd., 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 80 Broad Street, New York, N. Y.

The respondent, Marcus A. Crews, is an individual, trading as M. A. Crews Co. and as Pioneer Exporters, with his office and principal place of business at the present time located at Lawrenceburg, Tenn.

PAR. 2. Respondent, Neo Gravure Printing Co., Inc., now maintains, and for several years last past has maintained, a printing establishment in the State of New York, equipped for rotogravure printing of magazine sections for newspapers, magazines, and catalogs.

Respondent, Eggers & Heinlein, Inc., is now engaged, and for many years last past has been engaged, as an exporter and importer, and now acts, and for many years last past has acted, as an export and import commission merchant, doing business with foreign buyers and sellers located in foreign countries, particularly in Central America and the West Indies.

Respondent, Middleton & Co., Ltd., is now engaged, and for many years has been engaged, in business, as an exporter, and now acts, and for many years has acted, as an export commission merchant doing business with foreign buyers in various foreign countries.

Respondent, Marcus A. Crews, was at the time of the issuance of the complaint herein, and for several years prior thereto, engaged in asso-

ciation with printers and exporters in the sale of printed advertising matter, sometimes called "Manufacturers' Displays," suitable for insertion in catalogs, sometimes called "Export Catalogs," to manufacturers of numerous types of merchandise located in various States of the United States and in the District of Columbia.

For more than 2 years last past, except as found in paragraph 4 hereof, each of said respondents has been engaged in the sale of printed advertising matter, sometimes called "Manufacturers' Displays," suitable for insertion in catalogs, sometimes called "Export Catalogs," to manufacturers of numerous types of merchandise located in various States of the United States and in the District of Columbia.

A "Manufacturers' Display," as thus referred to, consists of printed advertising matter, describing and illustrating merchandise manufactured by an American manufacturer, printed on a sheet of paper suitable for insertion in, and as a part of, or section of, an "Export Catalog." An "Export Catalog," as thus referred to, consists of the "Displays" of a number of different American manufacturers, printed as aforesaid, which have been bound together in the form of a booklet with a cover bearing the name of an exporter and other material showing such booklet to be the catalog of such exporter.

Said various pieces of printed advertising matter, sometimes called "Manufacturers' Displays," upon being printed and sold by respondents, have been transported by respondents from the place in which they are printed in the State of New York to other places outside of the State of New York, located in various States of the United States, in the District of Columbia, and in foreign countries. "Export Catalogs," compiled as aforesaid, some bearing the name of the respondent, Eggers & Heinlein, Inc., and some bearing the name of the respondent, Middleton & Co., Ltd., have been transported by respondents from the place in which they have been compiled in the State of New York to other places outside the State of New York, located in various States of the United States, in the District of Columbia, and in foreign countries. Respondents have maintained a course of trade in said "Manufacturers' Displays" and in said "Export Catalogs" in commerce among and between the various States of the United States, in the District of Columbia, and between the State of New York and various foreign countries.

PAR. 3. In the course of the sale, offering for sale, and distribution by the respondents, Neo Gravure Printing Co., Inc., Eggers & Heinlein, Inc., Middleton & Co., Ltd., and Marcus A. Crews of printed advertising matter, referred to by them as "Manufacturers' Displays" and as "Displays," as printed on various sheets of paper, and as compiled in catalogs, sometimes referred to by them as "Export Catalogs,"

Findings

36 F. T. C.

as hereinbefore mentioned, said respondents, by means of letters transmitted by United States mails, by and through the solicitation of the respondent, Marcus A. Crews, in cooperation with said other three respondents, and by and through salesmen working under his direction, and by various other means, have, directly and indirectly, made to American manufacturers, in order to induce them to purchase said printed advertising matter, representations and implications, typical of which are the following:

1. That a definite demand existed from the foreign customers of each of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., for the merchandise made by the American manufacturers whose "Displays" were accepted for insertion in the "Export Catalogs" of said respondents.

2. That the American manufacturers whose "Displays" were inserted in the respective "Export Catalogs" of respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would have good reason to expect that said respondents would each purchase for their foreign customers a considerable quantity of the merchandise of said manufacturers.

3. That the "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., containing "Displays" of American manufacturers, were each permanent catalogs; that each constituted and would be a valuable sales help to their foreign representatives living in the more important trade centers abroad; that each of such catalogs, as used by said respondents and their foreign representatives, was an important feature in their established and usual method of securing foreign business; and that the use of such catalogs had resulted in the consummation of an important part of the sales of each of said respondents of American merchandise to their foreign customers.

4. That the operation of the business of each of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., had been, and was, dependent upon foreign business received by them through the use of their "Export Catalogs" containing "Displays" of merchandise made by American manufacturers.

5. That the insertion by American manufacturers of their "Displays" in the respective "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., and the furnishing by them to said respondents of their price lists and the descriptive material ordinarily used by them in the sale of their merchandise, would enable said respondents to sell the merchandise of said manufacturers directly abroad to the respective foreign customers of said respondents; and that such arrangement would act as an economical means to said manufacturers of securing foreign business and result in profit to them.

6. That the money required to be paid by the manufacturers pursuant to agreements entered into by them covering the insertion of their "Displays" in the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and in the "Export Catalog" of the respondent, Middleton & Co., Ltd., was for the purpose of paying to the respondent, Neo Gravure Printing Co., Inc., its ordinary and reasonable charges for the work performed by said last named respondent in the printing of 25,000 copies of the "Displays" of such manufacturers suitable for binding in the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and in the "Export Catalog" of the respondent, Middleton & Co., Ltd.

7. That the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would pay the cost of layouts, translations, copy, binding, covers, addressing, and

postage incident to the publication, compilation, delivery, and distribution abroad of 25,000 copies of an "Export Catalog" containing the "Displays" of the manufacturers entering into agreements for the insertion of their "Displays" in said catalog, a part of said number of copies to be bound as the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., and the balance of said copies to be bound as the "Export Catalog" of the respondent, Middleton & Co., Ltd.

8. That Marcus A. Crews, and M. A. Crews Co. and Pioneer Exporters, trade names used by the respondent, Marcus A. Crews, were connected with a department of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., and that such department constituted a useful and practical facility in the making of sales abroad of American merchandise through the respective foreign sales organizations of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd.

PAR. 4. The representations and implications contained in paragraph 3 hereof were made, as aforesaid, by all of the respondents for a period of time, and from time to time, prior to the early part of 1940. About the end of March 1940 the respondent, Middleton & Co., Ltd., withdrew from the cooperative arrangement which the respondents had, as aforesaid, for the selling of printed advertising matter, hereinbefore called "Manufacturers' Displays," and for the issuance, as aforesaid, of "Export Catalogs." Thereafter the remaining respondents continued said arrangement, and thereafter continued to make the representations and implications contained in paragraph 3, except that thereafter no mention was made by said remaining respondents of Middleton & Co., Ltd., its name, or its "Export Catalogs." Thereafter it was represented that there would be issued 25,000 copies of the "Export Catalog" of the respondent, Eggers & Heinlein, Inc., containing the "Displays" of the American manufacturers entering into agreements for the insertion of their displays in said catalog.

PAR. 5. The representations and implications set out in paragraph 3 hereof, and others of similar import and meaning, were used by respondents to induce, and did induce, a large number of American manufacturers to believe that the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., would be able to sell and would sell to their foreign customers large quantities of the merchandise made by each of the manufacturers whose "Displays" were inserted in the "Export Catalogs" of said last named respondents. As a result of the belief thus engendered a large number of American manufacturers were induced to pay, and did pay, to the respondent, Neo Gravure Printing Co., Inc., large sums of money, and to expend, and did expend, additional large sums of money in connection with agreements entered into by them covering the printing of their "Displays" for insertion in said "Export Catalogs." They were also thus induced to commission, and did commission, said respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., to sell their merchandise abroad.

All of said representations and implications were, and are, grossly exaggerated, deceptive, false, and misleading.

At the times that such representations and implications were made, as aforesaid, no foreign market or demand existed, or was then likely to exist, for any of the merchandise made by many of the American manufacturers whose "Displays" were accepted for insertion in the "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd. Much of the merchandise described in the "Displays" inserted in said catalogs has not, at any time heretofore mentioned, been salable abroad, as no foreign market or demand has existed for said merchandise. Neither of said last-named respondents has had any foreign customers to whom any amount of the merchandise of some of the American manufacturers could be sold.

The business of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., was so organized and operated that the representations and implications made, as herein found, were grossly deceptive and were likely to lead the American manufacturers, whose "Displays" were accepted for insertion in their "Export Catalogs," to expect that said respondents, or either of them, would purchase for their foreign customers an appreciable amount of the merchandise of the said American manufacturers. Said "Export Catalogs" were in no sense permanent catalogs which could be used permanently by said last-named respondents and were not susceptible of being used as an effective sales help by their foreign representatives or as a workable feature in the established and usual method of securing foreign business followed by said last-named respondents. The use of such a catalog by said last-named respondents was not likely to result and has not resulted, in the consummation of any material part of the sales abroad of American merchandise by either of said last-named respondents.

The fact is that "Export Catalogs" containing "Manufacturers' Displays" do not play, and have never played, an essential part in the making of sales abroad of American merchandise by either of said last-named respondents or by their respective foreign representatives. Such catalogs have been of no practical value as sales aids to the foreign representatives of said respondents. The businesses of said respondents have never been dependent upon the use of such a catalog.

The truth is that the money which the American manufacturers paid to the respondent, Neo Gravure Printing Co., Inc., pursuant to agreements entered into by them covering the insertion of their "Displays" in said "Export Catalogs" of the respondents, Eggers & Heinlein, Inc., and Middleton & Co., Ltd., was not used solely for the purpose of paying to the respondent, Neo Gravure Printing Co., Inc., its ordinary and reasonable charges for the work performed by it in the

printing of said "Displays." Only a part of such money was required by said respondent to cover its charges for such printing. Said respondent retained a considerable part of said money to pay the cost of lay-outs, translations, copy, binding, covers, addressing, and postage incident to the publication, compilation, delivery, and distribution abroad of the "Export Catalogs" containing said "Displays." A part of said money was given to the respondent, Marcus A. Crews, as a reward or commission for the obtaining by him and by the salesman working under his direction of said agreements of said American manufacturers. A considerable portion of said money was also paid to the respondent, Eggers & Heinlein, Inc., as a reward or commission for permitting the publication of said "Export Catalog" under its name, while the respondent, Middleton & Co., Ltd., received none of said money for permitting said catalog to be published under its name. Neither the respondent, Eggers & Heinlein, Inc., nor the respondent, Middleton & Co., Ltd., paid any of the costs incident to the publication, compilation, delivery, and distribution abroad of any of said "Export Catalogs" or the costs of any lay-outs, translations, copy, binding, covers, addressing, or postage incident thereto.

In truth and in fact, the cooperative arrangement entered into by the respondents aforesaid under which sales were made of said printed advertising matter was entered into and carried out by said respondents for the purpose of making a profit from the sale thereof and not for the purpose of making it possible, through the use of such catalogs or otherwise, to sell abroad the merchandise manufactured by the American manufacturers to whom said printed advertising matter was sold. The only connection which the respondent, Marcus A. Crews, has ever had with either of the respondents Eggers & Heinlein, Inc., or Middleton & Co., Ltd., or any department of said respondents, has been in the sale of said "Manufacturers' Displays" and in the issuance of said "Export Catalogs."

PAR. 6. The use by the respondents of the acts and practices hereinabove mentioned in connection with the sale, offering for sale, and distribution of "Manufacturers' Displays" and "Export Catalogs" in commerce, as hereinbefore set out, 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 the representations and implications aforesaid are true, when, in fact, they are not true, and causes many members of the purchasing public, because of said mistaken and erroneous belief, to purchase said "Manufacturers' Displays."

Order

30 F. T. C.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, Eggers & Heinlein, Inc., Middleton & Co., Ltd., and Marcus A. Crews, and upon stipulations as to the facts entered into between these respondents and respondent, Neo Gravure Printing Co., Inc., 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 findings as to the facts and conclusion based thereon and an order disposing of the proceeding (the proceeding having heretofore been dismissed as to respondent, Cuneo Press, Inc.); 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, Neo Gravure Printing Co., Inc., a corporation; Eggers & Heinlein, Inc., a corporation; Middleton & Co., Ltd., a corporation; their officers; and Marcus A. Crews, individually, and trading as M. A. Crews Co. and as Pioneer Exporters, or trading under any other name, 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 advertising matter, sometimes called "Manufacturers' Displays," and catalogs, sometimes called "Export Catalogs," do forthwith cease and desist from representing, directly or by implication:

1. That there is a demand from foreign customers of respondent, Eggers & Heinlein, Inc., or respondent, Middleton & Co., Ltd., for the products sold by manufacturers solicited for advertising to be inserted in said catalogs, or that the operation of the business of said respondents is dependent upon foreign business received by them through the use of such catalogs.

2. That display advertising in "Export Catalogs" of respondent, Eggers & Heinlein, Inc., or respondent, Middleton & Co., Ltd., will result in the sale of any substantial quantities of the products of any American manufacturer.

3. That said "Export Catalogs" are permanent catalogs or constitute an important feature of the established method used by respondent, Eggers & Heinlein, Inc., or respondent, Middleton & Co., Ltd., in securing business from foreign customers, or that the use of such catalogs has resulted in an important part of the sales of American merchandise made by said respondents.

4. That the money paid by manufacturers for insertion of display advertising in respondents' "Export Catalogs" is to be used only for the purpose of paying printing charges, when a part of the money so received is used to pay salesmen's commissions or commissions to respondents in whose names such catalogs are issued, or in payment for lay-outs, translations, copies, bindings, postage, or other costs of manufacturing or distribution.

5. That respondent, Marcus A. Crews, is connected with the export department of respondent, Eggers & Heinlein, Inc., or respondent, Middleton & Co., Ltd., or of any other exporter selling merchandise to foreign buyers, or that such department constitutes a useful facility in the sale of merchandise by said respondents to their foreign customers.

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 WIRE ROPE & STRAND MANUFACTURERS ASSOCIA-
TION, INC., ET AL.

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

Docket 4443. Complaint, Jan. 3, 1941—Decision, May 25, 1943

Where 15 member corporations of an association originally organized to meet the requirements of the National Industrial Recovery Act, 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; and (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—

- (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 number (smaller manufacturers) 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 list price 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) Filled 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 or 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 base and chain discounts published and usually allowed, and 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 Association, 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. Roebeling'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 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

Complaint

36 F. T. C.

of New Jersey, with its office and principal place of business located at Rockefeller Building, Cleveland, Ohio.

Respondent, 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 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 Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Twenty-first 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 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. 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 16 respondent members.

PAR. 3. Respondents, Harry J. Leschen, George S. Whyte, and George P. Lamb, as president, chairman of the board, and executive secretary, respectively, of 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 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 things 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, or 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

Complaint

36 F. T. C.

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 do 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.

Complaint

36 F. T. C.

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, MODIFIED 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 of 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, on December 8, 1942, made and entered its findings as to the facts and conclusion and order to cease and desist.¹ Thereafter, the matter came on for hearing upon motion, dated May 15, 1943, of Joseph J. Smith, Jr., assistant chief counsel for the Commission, to reopen this proceeding and to modify the Commission's said findings as to the facts and order to cease and desist, and the respondents having waived notice of and hearing upon said motion, and the Commission having duly considered the same and the entire record herein

¹ See 35 F. T. C. 750.

and being now fully advised in the premises and being of the opinion that the public interest requires a modification of its said findings as to the facts and order to cease and desist, the Commission finds that this proceeding is in the interest of the public and makes this its modified findings as to the facts and its conclusion drawn therefrom.

MODIFIED 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 & 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 & Wire Co. of New Jersey (referred to in the complaint as the American Steel & 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 in the Rockefeller Building, Cleveland, Ohio.

Respondent, Bethlehem Steel Co. (referred to in the complaint as 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 in the Russ Building, San Francisco, Calif. This respondent is affiliated with respondent, the American Steel & Wire Co. of New Jersey, 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 Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Twenty-first Street and Manchester Avenue, Kansas City, Mo.

Respondent, The Upson-Walton Co. (referred to in the complaint as 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 740 Superior Avenue West (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, The Wire Rope & Strand Manufacturers Association, Inc., 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 non-

patented 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 nine, 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 and 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 ten 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 sheet 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 re-

spondent 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 & 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 heretofore set out in paragraph 9, 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, 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 9, 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.

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%)

\$.43	List
×.70	— (30% discount)
<hr/> .3010	
— .0301	— (10% discount)
<hr/> .2709	
— .013545	— (5% discount)
<hr/> .257355	
— .01286775	— (5% discount)
<hr/> .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 co-operate 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 & Cable Company, 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 10 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 had 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 & 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 & Wire Co. of New Jersey, on December 17; respondent, John A. Roebeling'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 be-

come 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 & 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. Respondents, American Chain & Cable Co., Inc., and A. Leschen & Sons Rope Co., announced the same change on February 13; respondent, the American Steel & 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 3 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 & 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 that "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 interested" 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 & Cable Co., Inc., were together at White Sulphur Springs, W. Va., during the latter part of September 1938. Among those present were two 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 salesman 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 combination 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.

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.

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 construction 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

Conclusion

36 F. T. C.

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.

MODIFIED 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 counsel for the Commission, and the Commission having duly made and entered herein its findings as to the facts, conclusion, and order to cease and desist dated December 8, 1942, and the matter having thereafter come on for hearing upon motion dated May 15, 1943, of Joseph J. Smith, Jr., assistant chief counsel for the Commission, to reopen this proceeding and to modify the Commission's said findings as to the facts and order to cease and desist, and the respondents having waived notice of and hearing upon said motion, and the Commission having duly considered the same and the entire record herein and being now fully advised in the premises and being of the opinion that the public interest requires a modification of its said order to cease and desist, now, therefore, upon consideration of the entire record in this matter and upon its modified findings as to the facts this day dated and entered herein, the Commission, being of the opinion that the respondents (except those named in the last paragraph hereof) have violated the provisions of the Federal Trade Commission Act, issues this its modified order to cease and desist, and:

It is ordered, That respondents, American Chain & Cable Co., Inc., the American Steel & Wire Co. of New Jersey, Broderick & Bascom Rope Co., Columbia Steel Co., E. H. Edwards Co., A. Leschen & Sons Rope Co., MacWhyte Co., Pacific Wire Rope Co., Rochester Ropes, Inc., John A. Roebling's Sons Co., Union Wire Rope Corporation, 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 continuing, entering into, or carrying out

any agreement, understanding, combination, or conspiracy and from continuing or cooperating in any agreed or planned common course of action, between or among any two or more of said respondents, or between any one or more of said respondents and any person, association, or corporation not a party to this order, 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, The Wire Rope & Strand Manufacturers Association, Inc., and Bethlehem Steel Co.

Complaint

36 F. T. C.

IN THE MATTER OF
MODERNISTIC CANDIES, 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 4605. Complaint, Oct. 6, 1941—Decision, May 25, 1943

Where, a corporation and two officers and stockholders, engaged in the manufacture and competitive interstate sale and distribution of chewing gum, including certain assortments which were so packed and assembled in "ballgum boards" as to involve the use of a lottery scheme in sale thereof and of other merchandise under a plan, as typical, by which the different color of 20 pieces—or other number, as indicated thereon—entitled the customer, in addition to the penny piece secured by all, to a merchandise prize of ordinarily greater value, as supplied by the wholesaler or retailer; and thereby Supplied to and placed in latter's hands the means of conducting games of chance in the sale and distribution of such gum in accordance with aforesaid sales plan involving the sale of a chance to obtain additional merchandise at less than its normal retail price, contrary to an established public policy of the United States Government and in competition with those who do not use such plans or methods;

With result that many persons were attracted by their method of packing their gum and by the element of chance involved therein, and were thereby induced to buy and sell it in preference to that of competitors aforesaid, whereby substantial trade was diverted unfairly from latter to them:

Held, That such acts and practices, under the circumstances above 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. W. Brookfield, Jr., for the Commission.

Beach, Fathchild & Scofield, 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 Modernistic Candies, Inc., a corporation, and Sol S. Leaf and Harry Leaf, individually, and as officers of Modernistic Candies, Inc., hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Modernistic Candies, Inc., is a corporation, organized and doing business under the laws of the State of

Illinois, with its principal office and place of business located at 1734 West Hubbard Street, Chicago, Ill. Respondent, Sol S. Leaf, is the president of respondent, Modernistic Candies, Inc., and has his principal office and place of business at 1734 West Hubbard Street, Chicago, Ill. Respondent, Harry Leaf, is secretary-treasurer of Modernistic Candies, Inc., and has his principal office and place of business at 1734 West Hubbard Street, Chicago, Ill. All of said respondents act together and in cooperation with each other in doing the acts and things herein alleged. Respondents are now, and for more than 2 years last past have been, engaged in the manufacture of chewing gum and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause, and have caused, their products, when sold, to be transported from said place of business to purchasers thereof in the various States of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and for more than 2 years last past has been, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are, and have been, in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, their said chewing gum so packed and assembled as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in the sale or distribution of other merchandise to the consuming public. Said gum is packed and assembled in a corrugated paperboard in which there are 150 holes, each of which contains a ball of said gum. Nontransparent paper, which effectively conceals the said balls of gum, is pasted over the front and back of said board. Said boards containing said chewing-gum balls are commonly known as "ballgum" boards.

Many wholesale dealers who purchase said "ballgum" boards from respondents make up assortments composed of said boards and other articles of merchandise and sell and distribute said assortments to retail dealers who, in turn, sell and distribute, and have sold and distributed, the same to the purchasing public in substantially the following manner:

The majority of said balls of gum are of one color and the minority thereof are of a different color. Sales are 1 cent each and each purchaser is entitled to, and receives, one of said balls of gum which he punches from said board. If said ball of gum, so punched, is one of said majority balls the purchaser receives nothing in addition thereto for his money, but, if said ball is one of said minority balls the purchaser is entitled to and receives in addition thereto, other merchandise as a prize without additional charge. The said other merchandise has a retail value greater than 1 cent. Said balls of gum are effectively concealed from purchasers and prospective purchasers until the same have been purchased and punched or removed from said board. The said balls of gum and other merchandise are thus distributed to the purchasing public wholly by lot or chance.

Other wholesale dealers purchase said "ballgum" boards and sell and distribute the same to retail dealers as separate items of merchandise without making up such assortments. Retail dealers who purchase said boards without said prizes use their own merchandise as prizes and sell or distribute the same to the purchasing public by means of said boards in accordance with the sales plan or method hereinabove described.

PAR. 3. In so selling and distributing said "ballgum" boards, respondents supply to, and place in the hands of, others the means of, and an instrumentality for, the conducting of lotteries in the sale and distribution of merchandise in accordance with the above-described sales plan. 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 additional merchandise at a price which is much less than the normal retail price thereof. The use by respondents of said method in the designing, packing, and arranging of their chewing gum, and the sale and distribution of said chewing gum and other merchandise, as hereinbefore described, are practices of a sort which are contrary to an established public policy of the Government of the United States.

PAR. 4. Many persons, firms, and corporations, who sell or distribute and have sold and distributed chewing gum or other merchandise in competition with the respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their said chewing gum and the element of chance involved therein, and are

thereby induced to buy and sell respondents' chewing gum in preference to chewing gum or other merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to unfairly divert trade in said commerce to respondents from its said competitors who do not use the same or an equivalent method. As a result thereof substantial injury is being, and has been done by respondents to said competitors in said commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 6, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Modernistic Candies, Inc., a corporation, and Sol S. Leaf and Harry Leaf, individually, and as officers of Modernistic Candies, Inc., 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. 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, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Modernistic Candies, Inc., is a corporation, organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1734

West Hubbard Street, Chicago, Ill. Respondents, Sol S. Leaf and Harry Leaf, are president and secretary-treasurer, respectively, of the corporate respondent, and have their principal office and place of business at the same address as the corporate respondent. The individual respondents are the principal stockholders and the directing and controlling officers of the respondent corporation. They formulate and control the sales plans and merchandising policies of the corporation. All of the respondents have acted together and in cooperation with one another in carrying out the acts and practices herein described.

PAR. 2. The respondents are now and for a number of years last past have been engaged in the manufacture of chewing gum, and in the sale and distribution of such gum to wholesale dealers. 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 Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are and have been in substantial competition with other corporations and individuals, and with partnerships, engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business respondents pack and assemble certain of their chewing gum in such manner as to involve the use of a lottery scheme, gift enterprise, or game of chance when such gum is sold by retail dealers to the consuming public and used by such dealers in the sale and distribution of other merchandise to the consuming public. This gum is packed and assembled in a corrugated paperboard in which there are 150 holes, each of which contains a ball of gum. The holes are covered with nontransparent paper which effectively conceals the balls of gum. These boards are commonly known as "ballgum boards."

The majority of the balls of gum contained in the board are of one color, the minority being of a different color. For example, one type of board contains 20 red balls of gum and 130 balls which are white or some color other than red. Sales are one cent each, and each purchaser is entitled to and receives for the 1 cent paid one of the balls of gum, which he punches from the board. If the ball of gum punched is one of the majority balls, the purchaser receives nothing for his money except the ball of gum. If, however, the ball of gum punched

happens to be one of the minority balls, the purchaser is entitled to and receives in addition to the gum other merchandise as a prize, such additional merchandise being without further cost to the purchaser. The prize merchandise usually has a retail value greater than 1 cent. All of the balls of gum are effectively concealed from purchasers and prospective purchasers until they have been purchased and punched from the board. The balls of gum and the other merchandise awarded as prizes are thus distributed to the public wholly by lot or chance.

Some of the wholesale dealers who purchase these ballgum boards from respondents make up assortments composed of such boards and other articles of merchandise, and sell and distribute such assortments to retail dealers who, in turn, sell and distribute such gum and other merchandise to the public in the manner described above. Other wholesale dealers purchasing such boards from respondents sell and distribute the boards to retail dealers as separate items of merchandise without combining them with other merchandise. Retail dealers who purchase the boards alone use their own merchandise as prizes and sell and distribute the gum and other merchandise to the public in accordance with the aforesaid sales plan.

The record indicates that rarely, if ever, do retail dealers purchase the boards as "straight" merchandise—that is, merely for the purpose of selling the gum itself. Almost invariably the board is purchased and used by the retailer as a lottery device, and it is obvious that the board is intended and designed by respondents for that purpose. Of significance in this connection is the fact that each board, when it leaves the respondents' hands, has imprinted thereon a certain number, as "20" or "24". This number indicates the number of red balls of gum contained in the particular board, and the retailer is thereby enabled to determine the number of prizes which will be required in the operation of the board.

PAR. 5. In selling and distributing gum packed and assembled in the manner described above, respondents supply to and place in the hands of others the means of conducting lotteries or games of chance in the sale and distribution of such gum to the public in accordance with the aforesaid sales plan. The sale of merchandise to the public in the manner described above involves a game of chance or the sale of a chance to obtain additional merchandise at a price less than the normal retail price thereof. The use by respondents of this method of packing and assembling their chewing gum, and the sale and distribution of such gum and of other merchandise to the public by means of the plan or method herein described, are practices of a sort which are contrary to an established public policy of the Government of the United States.

PAR. 6. Among the persons, partnerships, and corporations who sell and distribute chewing gum in competition with the respondents, as set forth in paragraph three hereof, are those who do not pack and assemble their chewing gum in the manner described above and who do not use any other plan or method involving a game of chance or lottery scheme in the sale of their gum to the consuming public. Many persons are attracted by respondents' method of packing and assembling their gum and by the element of chance involved in the sale of gum so packed and assembled to the consuming public, and are thereby induced to buy and sell respondents' chewing gum in preference to that offered for sale and sold by those competitors of respondents who do not so pack and assemble their gum. The use by respondents of such method of packing and assembling their gum has the tendency and capacity to divert, and has diverted, substantial trade unfairly to respondents from such competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Modernistic Candies, Inc., a corporation, its officers, and Sol S. Leaf and Harry Leaf, individually, and as officers 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 of chewing gum or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of wholesale dealers, retail dealers, or others, "ballgum boards" or other lottery devices which are to be used or may be used in the sale or distribution of respondents' merchandise or any merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or distributing chewing gum or other merchandise so packed and assembled that sales of such chewing gum or other merchandise to the public are to be made or, due to the manner in which such gum or other merchandise is packed and assembled at the time it is sold by respondents, may be made by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF
HECHT COMPANY ALSO TRADING AS HECHT BROS.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4840. Complaint, Sept. 28, 1942—Decision, May 25, 1943

Where a corporation engaged in the operation of department stores in Baltimore, Washington, and New York, and in interstate sale and distribution, among other things, of mattresses—

Falsely represented through statements in periodicals, catalogs, circulars, lists and other advertising material, that its \$19.75 price for mattresses was much less than the usual price therefor and was a special price, affording the purchaser a substantial saving over the customary one; when in fact such was its usual selling price;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it to purchase its said products:

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

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

Lauchheimer & Frank, of Baltimore, Md., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Hecht Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located in the city of Baltimore, State of Maryland. It also trades as and uses the name of Hecht Bros. Respondent is now and for some time last past has been engaged in the business of selling and distributing mattresses and other merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent maintains and operates department stores in the cities of Baltimore, Md., Washington, D. C., and New York, N. Y. Respondent causes its merchandise when sold to be shipped from its

place of business in the States of Maryland and New York and in the District of Columbia to purchasers thereof located in various other 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 said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business respondent is now and has been for some time last past in competition with other corporations and with individuals and firms engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. To induce the purchase of its said mattresses, respondent has disseminated and is now disseminating false and misleading statements and representations with respect to said products and the purchase price thereof. Such statements and representations are inserted in periodicals having a general circulation and in catalogs, circulars, lists, and other advertising material which are distributed among prospective customers. Among and typical of such false and misleading representations are the following:

Actually One-Half Price "Paisley Quilted" \$39.50 Inner-spring Mattress \$19.75.

Only because of our far-sighted planning is it possible for us to offer this QUILTED mattress to you at HALF price.

\$39.50 Inner-spring Mattress actually one-half price, \$19.75.

PAR. 3. By the use of the foregoing statements, together with other statements similar thereto, not specifically set out herein, the respondent represents that the \$19.75 prices for its mattresses are much less than the customary and usual prices at which such mattresses are sold and are special prices and that in purchasing said mattresses at the advertised price, a substantial saving, over the usual and customary price, is afforded a purchaser.

PAR. 4. The foregoing representations are false, misleading, and deceptive. In truth and in fact prices at which respondent's mattresses are advertised for sale are not in fact reduced or half prices and do not represent any substantial saving to the purchaser but are substantially the same prices at which said mattresses are usually sold by respondent and by others selling similar mattresses.

PAR. 5. The use by respondent of the aforesaid 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.

PAR. 6. The aforesaid acts and practices of the respondent, as herein set forth, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 28, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Hecht Co., a corporation, also trading as Hecht Bros., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On October 15, 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, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, answer, and stipulation (said stipulation having been approved, accepted and filed) and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hecht Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located in the city of Baltimore, State of Maryland. It also trades as and uses the name of Hecht Bros. Respondent is now, and for some time last past, has been engaged in the business of selling and distributing mattresses and other merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent maintains and operates department stores in the cities of Baltimore, Md., Washington,

D. C., and New York, N. Y. Respondent causes its merchandise, when sold, to be shipped from its places of business in the States of Maryland and New York and in the District of Columbia to purchasers thereof located in various other 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 said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. To induce the purchase of its said mattresses, respondent has disseminated statements and representations with respect to said products and the purchase price thereof. Such statements and representations were inserted in periodicals having a general circulation, and in catalogs, circulars, lists, and other advertising material which were distributed among prospective customers. Among and typical of such representations are the following:

Actually One-Half Price "Paisley Quilted" \$39.50 Inner-spring Mattress \$19.75.

Only because of our far-sighted planning is it possible for us to offer this QUILTED mattress to you at HALF price.

\$39.50 Inner-spring Mattress actually one-half price, \$19.75.

PAR. 3. By the use of the foregoing statements, together with other statements similar thereto not specifically set out herein, the respondent represented that the \$19.75 price for its mattresses was much less than the customary and usual price at which such mattresses were sold by it and was a special price, and that in purchasing said mattresses at the advertised price, a substantial saving over the usual and customary price was afforded the purchaser.

PAR. 4. In truth and in fact, the price at which respondent's said mattresses were advertised for sale was not half price and did not represent any such substantial saving to the purchaser, but was substantially the same price at which said mattresses were and are usually sold by respondent.

PAR. 5. The use by respondent of the aforesaid statements and representations had the tendency and capacity to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and, because of such erroneous and mistaken belief, a substantial portion of the purchasing public was induced to and did purchase respondent's said mattresses.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public, and constitute

Order

36 F. T. C.

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Hecht Co., a corporation, also trading as Hecht Bros., or trading under any other name, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mattresses 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 mattresses any price which is in excess of the price at which such mattresses have been regularly sold by respondent in the usual course of business.

2. Representing that the price at which respondent's mattresses are offered for sale constitutes a special or reduced price or half price, when in fact such price is the usual or customary price at which such mattresses are offered for sale by respondent in the usual course of business.

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

Complaint

IN THE MATTER OF

BEN KOTTENBROOK, TRADING AS CONWAY TAILORS

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

Docket 4910. Complaint, Feb. 12, 1943—Decision, May 26, 1943

Where an individual engaged in the manufacture and interstate sale and distribution of men's wearing apparel in response to orders solicited therefor from persons in various states—

Sold his said garments under a so-called "club" plan in accordance with which participating purchasers undertook to pay \$1 down and \$1 a week, and each week a suit of clothes was awarded to one of the purchasers by chance on the basis of the weekly clearing house figures published in the local paper, without payment of further installments, and thereby conducted lotteries in accordance with aforesaid sales plan involving sale of a chance to procure an article at less than the contract retail price, contrary to an established public policy of the United States Government, and in competition with many who do not use any method contrary to public policy;

With the result that many were attracted by his said sales method and by the element of chance involved therein, and were thereby induced to buy his merchandise in preference to that of his aforesaid competitors;

With tendency and capacity to divert trade in commerce from his said competitors to him:

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

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

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 Ben Kottonbrook, an individual, trading as Conway Tailors, 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

¹ The complaint was amended by an order of the Commission dated May 1, 1943, as follows:

The Commission issued its complaint on February 12, 1943, naming Ben Cottonbrook, an individual, trading as Conway Tailors, as party respondent, and it appearing to the Commission that the correct spelling of the name of the respondent is "Kottenbrook" and not "Cottonbrook."

It is hereby ordered, That the complaint hitherto issued in the matter be, and the same hereby is, amended to change the spelling of the name of the respondent from "Cottonbrook" to "Kottenbrook."

Complaint

36 F. T. C.

be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ben Kottonbrook, is an individual trading and doing business as Conway Tailors, with his principal place of business located at 434 Elm Street, Cincinnati, Ohio. Respondent, is now, and for more than one year last past, has been engaged in the manufacture and sale and distribution of men's wearing apparel from his said place of business through the solicitation of orders for such merchandise from persons living in various States of the United States. Respondent filled such orders by transporting said merchandise or causing same to be transported from his said place of business in Cincinnati, Ohio, to purchasers thereof at their respective points of location in various States of the United States. Respondent maintains and at all times mentioned herein has maintained a course of trade in his said garments in commerce between and among the various States of the United States.

In the course and conduct of his business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent is now and has been selling and distributing said garments to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent or respondent's agent to purchase a suit of clothes or overcoat under a so-called "club" plan. Respondent supplies such purchaser participating in said plan with a contract of purchase, which contract provides for the sale by respondent to such purchaser of a suit of clothes for the sum of \$35 which said amount is to be paid as follows: \$1 when contract is delivered and \$1 or more per week thereafter. There is space provided on the said contract for the recording of the weekly payments. Purchasers are informed by respondent or respondent's agent that each week a suit of clothes will be awarded to the holder of one of the contracts, by chance, based upon the weekly clearing house figures as published in the Cincinnati Inquirer without payment of further instalments. Purchasers who do not win a suit by said chance prior to the payment of the full amount of their contract are required to pay a full \$35 for their suits or overcoats.

Whether a purchaser of one of the respondent's suits or overcoats pays less than \$35 or \$35 is thus determined wholly by lot or chance.

PAR. 3. Respondent has sold and distributed his merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing his merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of such garments by and through the use thereof, and by the aid of said methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price less than the contracted retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise, in competition with respondent, as above alleged, do not use said methods or any methods involving the use of a game of chance, or the sale of a chance to win something by chance or any other method that is contrary to public policy. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above alleged and are thereby induced and persuaded to buy respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods.

PAR. 5. The use of said methods by the respondent because of said game of chance has a tendency and capacity to divert trade in commerce between and among the various States of the United States to respondent from his said competitors who do not use the same or equivalent sales plans or methods.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission 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 12, 1943, issued and on February 13, 1943, served its complaint in this proceeding upon respondent, Ben Kottenbrook (referred to in the complaint as Ben Cottonbrock), an individual, trading as Conway Tailors, charging him

Findings

36 F. T. C.

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. On April 21, 1943, the respondent filed his answer, in which answer he admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the 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, Ben Kottenbrook, is an individual, trading and doing business as Conway Tailors, with his principal place of business located at 434 Elm Street, Cincinnati, Ohio. Respondent, is now, and for more than one year last past, has been engaged in the manufacture and sale and distribution of men's wearing apparel from his said place of business through the solicitation of orders for such merchandise from persons living in various States of the United States. Respondent fills such orders by transporting said merchandise, or causing the same to be transported, from his said place of business in Cincinnati, Ohio, to purchasers thereof at their respective points of location in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said garments in commerce between and among the various States of the United States.

In the course and conduct of his business, respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent is now and has been selling and distributing said garments to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent or respondent's agents to purchase a suit of clothes or overcoat under a so-called "club" plan. Respondent supplies each purchaser participating in said plan with a contract of purchase, which contract provides for the sale by respondent to such purchaser of a suit of clothes

for the sum of \$35, which said amount is to be paid as follows: \$1 when contract is delivered, and \$1 or more per week thereafter. There is space provided on the said contract for the recording of the weekly payments. Purchasers are informed by respondent or respondent's agents that each week a suit of clothes will be awarded to the holder of one of the contracts, by chance, based upon the weekly clearing house figures as published in the Cincinnati Inquirer, without payment of further instalments. Purchasers who do not win a suit by said chance prior to the payment of the full amount of their contract are required to pay a full \$35 for their suits or overcoats. Whether a purchaser of one of respondent's suits or overcoats pays less than \$35 or \$37 is thus determined wholly by lot or chance.

PAR. 3. Respondent has sold and distributed his merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing his merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of such garments 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 described involves a game of chance or the sale of a chance to procure an article of merchandise at a price less than the contracted retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondent, as above set forth, do not use said methods or any methods involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above described, and are thereby induced and persuaded to buy respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods.

PAR. 5. The use of said methods by the respondent, because of said game of chance, has a tendency and capacity to divert trade in commerce between and among the various States of the United States to respondent from his said competitors who do not use the same or equivalent sales plans or methods.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's

competitors, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Ben Kottenbrook, individually and trading as Conway Tailors, 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 men's wearing apparel or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of agents or others, any sales plan or method involving the operation 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
NATIONAL ASSOCIATION OF SANITARY MILK BOTTLE
CLOSURE MANUFACTURERS 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 4565. Complaint, Aug. 12, 1941—Decision, June 1, 1943

Where a number of corporations, manufacturing approximately all the closure milk bottle caps produced in the United States, members of an association which was the Code Authority for the industry under the N. R. A., selling practically all of their said product as special printed caps, on an annual requirement basis, to jobbers and dairies and in competition with one another and others except as such competition had been restrained as below set forth—

(a) Entered into agreements and combinations to file with their said association price lists for closure milk bottle caps, and to abide by such filed prices until new and different prices were filed, and to fix and maintain certain uniform discounts, uniform contract terms and trade practices and other uniform conditions for the sale and distribution in commerce of said products; and

Where said association, pursuant to said agreements and combinations—

(b) Rated and classified over 7,800 dairies, located throughout the United States, according to the number of closure caps used annually, through its "Annual Requirement Record" which it compiled and published;

(c) Limited the quantity of such caps which jobbers or dairy customers might contract for or purchase from aforesaid manufacturers, and prevented sale of such caps to cooperative buying agencies, and confined it exclusively to jobbers and dairy consumers; and

Where said manufacturers—

(d) Agreed to and did adhere to said ratings in determining contract prices at which dairies should be sold, and fixed and maintained quantity prices or price differentials based on the quantities purchased from all sources as fixed or determined by such rating books;

(e) To make more effective the operation and carrying out of aforesaid agreements and combinations, filed with the aforesaid association in addition to price lists, copies of invoices containing names of purchasers, quantities purchased and prices paid therefor, and copies of contracts and conditions of sale; and

Where said association—

(f) Checked said filed data to determine whether said manufacturers carried out aforesaid agreements, and invited member manufacturers to complain if another member was not abiding by its policies, in accordance with its policy and practice of policing the industry; and

(g) Held or sponsored meetings of said manufacturers for the discussion and interchange of information relative to prices, discounts, and conditions or terms to be fixed for the sale of said caps;

With the result that competition among them in the sale of closure milk bottle caps in commerce was restrained and prevented:

Complaint

36 F. T. C.

Held, That the understandings and agreements, and the things done pursuant thereto, were all to the prejudice of the public; had a dangerous tendency to and did actually hinder and prevent competition between and among said manufacturers in the sale of closure milk bottle caps; unreasonably restrained such commerce therein; and constituted unfair methods of competition.

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

Mr. Daniel J. Murphy for the Commission.

Mr. Joseph J. Brown, of Philadelphia, Pa., and *Smith, Buchanan & Ingersoll*, of Pittsburgh, Pa., for National Association of Sanitary Milk Bottle Closure Manufacturers; *Stanley Dennis*, *George J. Lincoln, Jr.*, *Harvey M. Smith*, Aluminum Seal Corporation, *Crown Cork & Seal Co., Inc.*, *Mid-West Bottle Cap Co.*, and *Smith-Lee Co., Inc.*; and, along with *Hiscock, Cowie, Bruce, Lee & Mawhinney*, of Syracuse, N. Y., for *Sealright Co., Inc.*

Edwards & Smith, of New York City, for *Daniel A. Mackin* and *American Seal-Kap Corporation*.

Sullivan & Cromwell, of New York City, for *Jarvis Williams, Jr.*, and *Standard Cap & Seal Corporation*.

Baker, Baker & Bowen, of Fitchburg, Mass., for *Cowdrey Products Co., Inc.*

Mr. William D. Slattery, of Syracuse, N. Y., for *Sanitary Metal Cap Corporation*.

Mr. James Amadei (receiver in bankruptcy), of Brooklyn, N. Y., for *Universal Seal Cap 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 parties named in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Association of Sanitary Milk Bottle Closure Manufacturers, hereinafter for convenience referred to as the respondent association, is an unincorporated trade association, organized in August 1933, and having its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The membership of said respondent association is composed of 10 corporations engaged in the manufacture and sale of closure milk bottle caps, and a corporation engaged in the manufacture and sale

of capping machinery, which latter corporation is not named as a respondent herein.

The respondent association operated through its officers who consist of a chairman, a secretary-treasurer-manager, referred to as manager, and an executive committee.

The respondent officers of the respondent association are:

Stanley Dennis, chairman, 1532 Lincoln-Liberty Building, Philadelphia, Pa.

George J. Lincoln, Jr., manager, 1532 Lincoln-Liberty Building, Philadelphia, Pa.

The present respondent members of the executive committee of the respondent association are:

Daniel A. Mackin, president of American Seal-Kap Corporation, 11-05 Forty-Fourth Drive, Long Island City, N. Y.

Harvey M. Smith, president of Smith-Lee Co., Inc., Oneida, N. Y.

Jarvis Williams, Jr., president of Standard Cap & Seal Corporation, 1200 Fullerton Avenue, Chicago, Ill.

PAR. 2. The respondent members, hereinafter so designated, of the respondent association are as follows:

Aluminum Seal Corporation, is a corporation, the place of whose incorporation is not known to the Commission, and having its principal office and place of business in New Kensington, Pa.

American Seal-Kap 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 11-05 Forty-Fourth Drive, Long Island City, N. Y.

Cowdrey Products Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts and having its principal office and place of business at 47 Prescott Street, Fitchburg, Mass.

Crown Cork & Seal Co., Inc., 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 4425 Easton Avenue, Baltimore, Md.

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

Sanitary Metal Cap 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 1725 East Water Street, Syracuse, N. Y.

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

Complaint

36 F. T. C.

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

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

Universal Seal Cap Corporation, is a corporation, organized and existing under the laws of the State of Connecticut and having its principal office and place of business at 32 Thirty-third Street, Brooklyn, N. Y.

PAR. 3. Respondent members are all, respectively, manufacturers of closure milk bottle caps and in the regular course and conduct of their respective businesses sell and distribute closure 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 closure 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 members have maintained, and still do maintain, a regular current of trade in closure milk bottle caps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent association, 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. Closure milk bottle caps are caps which cover all or part of the pouring lip of a milk bottle. There are several different kinds of closure caps manufactured and sold by the respondent members including paper, aluminum, cellophane, and metal caps. Some of the respondent members manufacture and sell more than one kind. The manufacture of closure caps has increased tremendously during recent years because health ordinances are requiring the use of caps which cover all or a part of the pouring lip of milk bottles. The respondent members, who compose approximately all the manufacturers of closure milk bottle caps in the industry, in the United States, in 1935 manufactured and sold approximately 1,611,000,000 units, the dollar sales of which amounted to approximately \$3,151,200; whereas in

1940 the respondent members manufactured and sold approximately 4,002,000,000 units, the dollar sales of which amounted to approximately \$6,194,900. The sales of said closure caps are made by the respondent members to jobbers and dairies.

PAR. 6. Respondent members in the regular course and conduct of their respective businesses have been, and are, in active and substantial competition with each other, and with other manufacturers and sellers of 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 association hereinabove described, its officers, members of its executive committee, and its members, named and included as respondents herein, during and in the period 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 closure 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 members have

(a) Agreed to file and in practice have actually filed with the respondent association their price lists for closure milk bottle caps.

(b) Agreed that they would not change or deviate from such filed prices until new and different prices were so filed by them.

(c) Agreed that the respondent association could and it did disseminate prices so filed to all other members of the respondent association.

2. Respondent members have agreed to fix and maintain and have fixed and maintained uniform discounts and other conditions for the sale of closure milk bottle caps sold and distributed by them.

3. Respondent members 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 closure milk bottle caps to be sold to said dairies and delivered thereto, in ac-

Complaint

36 F. T. C.

cordance with their needs, at different times of the year, at a price dependent upon the quantity contracted for.

4. Respondent association from time to time issues an "Annual Requirement Record," and supplements thereto, which classifies and rates dairies, in the United States, using closure milk bottle caps, the seventh edition of the Annual Requirement Record dated November 1, 1940, rates and classifies approximately 7,809 such dairies.

5. Respondent members agreed to abide and did abide by said Annual Requirement Record in determining the prices at which a dairy would be sold; sales were made by the respondent members to dairies at a price based upon the quantity listed for such customer in the Annual Requirement Record and respondent members agreed that sales were not to be made to dairies at a price based upon a greater quantity than the quantity listed for such customer in the Annual Requirement Record.

6. Respondent members agreed to furnish and have furnished the respondent association with copies of all contracts and invoices covering the sales of closure milk bottle caps showing the name of the purchaser, the quantity sold, and the price.

7. Respondent association checked the contracts and invoices covering the sales of closure milk bottle caps, filed by the respondent members, to determine whether the prices therein were in accordance with the filed prices and the Annual Requirement Record.

8. Respondent association contacted respondent manufacturers who were found making sales of closure milk bottle caps at prices different from their filed prices and such respondent manufacturers were called upon by the respondent association to explain such price differences and to make all future sales in accordance with filed prices.

9. Respondents have agreed not to sell and they have not sold closure milk bottle caps to cooperative buying groups.

10. 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 closure 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 closure 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 12th day of August, 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. Subsequently, the respondents filed their answers to the complaint. Thereafter, hearings were held on November 4, 1942, and March 2, 1943, before John W. Norwood, a trial examiner of the Commission theretofore duly designated by it, at which latter hearing a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, which was read into the record and subsequently executed by counsel for all the respondents except Aluminum Seal Co. (referred to in the complaint as Aluminum Seal Corporation), Crown Cork & Seal Co., Inc., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding 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 and its conclusion based thereon, and enter its order disposing of the proceeding except as to the four respondents named above without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and 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, National Association of Sanitary Milk Bottle Closure Manufacturers, hereinafter for convenience referred to as the respondent association, is an unincorporated trade association, organized in August 1933, and having its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The membership of said respondent association is composed of ten corporations engaged in the manufacture and sale of closure milk bottle caps, and a corporation engaged in the manufacture and sale of capping machinery, which latter corporation is not named as a respondent herein.

The respondent association operates through its officers, who consist of a chairman, a secretary-treasurer-manager, referred to as manager, and an executive committee.

The respondent officers of the respondent association are:

Stanley Dennis, chairman, 1532 Lincoln-Liberty Building, Philadelphia, Pa.

George J. Lincoln, Jr., manager, 1532 Lincoln-Liberty Building, Philadelphia, Pa.

During the year 1938, the respondent members of the executive committee of the respondent association were:

Daniel A. Mackin, president of American Seal-Kap Corporation, 11-05 Forty-fourth Drive, Long Island City, N. Y.

Harvey M. Smith, president of Smith-Lee Co., Inc., Oneida, N. Y.

Jarvis Williams, Jr., president of Standard Cap & Seal Corporation, 1200 Fullerton Avenue, Chicago, Ill.

PAR. 2. In 1938 the respondent members, hereinafter so designated, of the respondent association were as follows:

Aluminum Seal Co., a corporation, organized and existing under the laws of the State of Pennsylvania, having its principal office and place of business in New Kensington, Pa.

American Seal-Kap Corporation, a corporation, organized and existing under the laws of the State of New York, having its principal office and place of business at 11-05 Forty-fourth Drive, Long Island City, N. Y.

Cowdrey Products Co., Inc., a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at 47 Prescott Street, Fitchburg, Mass.

Crown Cork & Seal Co., Inc., a corporation, organized and existing under the laws of the State of New York, having its principal office and place of business at 4425 Eastern Avenue, Baltimore, Md.

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

Sanitary Metal Cap Corporation, a corporation, organized and existing under the laws of the State of New York, having its principal office and place of business at 1725 East Water Street, Syracuse, N. Y.

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

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

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

Universal Seal Cap Corporation, a corporation, organized and existing under the laws of the State of Connecticut, having its principal office and place of business at 32 Thirty-third Street, Brooklyn, N. Y.

PAR. 3. During the year 1938, respondent members were all respectively manufacturers of closure milk bottle caps, and in the regular course and conduct of their respective businesses sold and distributed closure milk bottle caps manufactured by them to the purchasers thereof; and in connection with said sales shipped and transported, or caused to be shipped and transported, said closure 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 members then maintained a regular current of trade in closure milk bottle caps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Closure milk bottle caps are caps which cover the pouring lip of a milk bottle. There are several different kinds of closure caps manufactured and sold by the respondent members, including paper, cellophane, and metal caps, and, during 1938, aluminum caps. Some of the respondent members manufacture and sell more than one kind. The respondent members, who compose approximately all the manufacturers of closure milk bottle caps in the industry in the United States, in 1935 manufactured and sold approximately 1,611,000,000 units, the dollar sales of which amounted to approximately \$3,151,200;

whereas in 1940 the respondent members manufactured and sold approximately 4,002,000,000 units, the dollar sales of which amounted to approximately \$6,194,900. The sales of said closure caps are made by the respondent members to jobbers and dairies.

PAR. 5. Respondent members in the regular course and conduct of their respective businesses have been and, with the exception of Cowdrey Products Co., Inc., Aluminum Seal Co., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation, are still in active and substantial competition with one another, and with other manufacturers and sellers of 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 that such competition has been restrained, lessened, injured, and suppressed as a result of the acts and practices herein described.

PAR. 6. The manufacture of closure milk bottle caps is considered a different industry from the manufacture of disk milk bottle caps, although some of the respondents herein manufacture both disk and hood or closure caps. The manufacture of closure caps has increased tremendously during recent years, due principally to the fact that more and more health ordinances have required dairies to use caps which cover the pouring lip of milk bottles. The increase in the use of closure caps, however, has not kept pace with the decrease in the use of the disk caps, due to the use of two-quart milk bottles and paper milk containers. Formerly, closure caps were used principally by dairies only on premium grades of milk merely for the purpose of making the bottle more attractive. It has been only within the past few years that health ordinances have been requiring the use of closure caps. When dairies first began the use of closure caps, they merely placed a hood over the top of bottles which were already covered with a disk cap. In recent years some manufacturers have produced caps which do not require the use of disk caps underneath, while other manufacturers have continued to produce closure caps which require the use of both a hood and a disk cap. It is generally understood in the industry that the term "closure" refers to a complete cap, which in some instances means both a hood and a disk cap.

PAR. 7. There are a number of different kinds of closure caps manufactured. Some of the respondents manufacture more than one kind. Four of the respondents, namely American Seal-Kap Corporation, Mid-West Bottle Cap Co., Sealright Co., Inc. and Smith-Lee Co., Inc., manufacture a cap that is generally referred to as a short-skirted cap. In addition to the four companies named, Universal Seal Cap Corporation formerly manufactured a similar type

of cap. Other kinds of closure caps manufactured include aluminum foil sold by Aluminum Seal Co. and Sanitary Metal Cap Corporation, prior to 1941, cellophane sold by Smith-Lee Co., Inc. and National Manufacturing Co., metal caps sold by Crown Cork & Seal Co., and various kinds of full hood paper caps. Sealright Co., Inc., manufactures and sells a cap called "Sealon" cap which extends over and below the pouring lip of the bottle.

PAR. 8. The total shipments of closure caps in units and in dollars throughout practically the entire industry for the years 1934 through 1940 are as follows:

<i>Year</i>	<i>Units in MM</i>	<i>Amount</i>
1934 -----	2,427. 2	\$2, 821, 200
1935 -----	1, 611. 3	3, 151, 200
1936 -----	1, 920. 1	3, 720, 500
1937 -----	2, 448. 4	4, 573, 300
1938 -----	3, 184. 3	5, 733, 600
1939 -----	3, 690. 7	6, 482, 500
1940 -----	4, 002. 0	6, 194, 900

PAR. 9. Practically all of the closure caps sold are special printed caps. The usual method of selling is through jobbers to dairies. However, a number of manufacturers make sales direct to dairies. Most of the manufacturers sell on an annual requirement basis. The dairy contracts with the manufacturer for a certain quantity of a specified kind of cap to be delivered during the year as needed by the dairy. The prices paid by the dairy are dependent generally upon the quantity contracted for. In order that the manufacturers and jobbers may have information as to the number of caps the dairy ordinarily uses, the association publishes an Annual Requirement Record or Rating Book in which each dairy in the United States which uses closure caps is rated according to the number of caps used during the year preceding the issuance of the book. The last edition of the Annual Requirement Record contains the ratings of 7,809 dairies.

PAR. 10. The National Association of Sanitary Milk Bottle Closure Manufacturers, referred to herein as the association, was organized on August 18, 1933, and was the Code Authority for the Sanitary Milk Bottle Closure Industry under the N. R. A. It was voted at the organization meeting to retain George J. Lincoln, Jr., as manager and as secretary of the association. Upon the termination of the N. R. A. in May 1935, the association continued to function as an association.

Findings

36 F. T. C.

The purposes of the association are set forth in the revised constitution and bylaws as follows:

The National Association of Sanitary Milk Bottle Closure Manufacturers shall be unincorporated and shall not be conducted for profit. Its purpose shall be to undertake, conduct, and supervise such lawful cooperative activities as will promote the best interests and welfare of the Sanitary Milk Bottle Closure Manufacturers.

PAR. 11. The following tabulation shows the average prices received by the different manufacturers of closure caps for each of the years 1934 through 1939, and for the month of October, 1940:

Co. No.	1934	1935	1936	1937	1938	1939	Oct. 1940
	(Price per M)						
1.....	1.272	1.379	1.420	1.385	1.277	1.251	1.001
2.....	2.080	2.047	1.968	1.911	1.856	1.862	1.623
3.....	2.229	2.142	2.088	1.870	1.705	1.687	1.665
4.....	1.428	1.477	1.518	1.551	1.643	1.606	1.473
5.....	1.079	1.083	1.069	1.226	1.538	1.640	1.683
6.....	1.572	1.564	1.715	1.655	1.714	1.714	1.453
7.....	2.392	2.312	2.310	2.267	2.253	2.143	1.453
8.....	2.174	1.994	2.136	1.958	1.967	1.771	---
9.....	---	2.444	2.412	2.313	2.306	2.314	---
10.....	---	---	---	2.154	2.166	2.145	2.804

PAR. 12. Respondents, American Seal-Kap Corporation, Mid West Bottle Cap Co., Smith-Lee Co., Inc., and Sealright Co., Inc. are manufacturers of the so-called short-skirted caps. The Sealright Co., Inc., first made such caps in 1937, and in 1939 began making its so-called "Sealon" cap. In 1940 such "Sealon" caps comprised about 75 percent of the closure caps this company made, and in 1941 about 85 percent. Sales of "Sealon" caps have been on a spot-order basis. Respondent, Universal Seal Cap Corporation, also manufactured short-skirted caps, but ceased the manufacture of such in December 1940. The prices, exclusive of freight, published by the four manufacturers of the short-skirted caps were uniform. For example, in June 1940, such uniform prices for No. 2 size caps were as follows:

Less than 100,000.....	\$2.6
100,000 to less than 250,000.....	2.5
250,000 to less than 500,000.....	2.3
500,000 to less than 1,000,000.....	2.2
1,000,000 to less than 5,000,000.....	2.0
5,000,000 to less than 10,000,000.....	1.8
10,000,000 to less than 15,000,000.....	1.7
15,000,000 and over.....	1.5
In a dairy taking carload (30,000 lbs. at one time).....	1.1

PAR. 13. Respondent, Universal Seal Cap Corporation, on March 20, 1936, informed the association: "We are at present preparing

new price list which when completed will be the same as Kleen Seal (Smith-Lee Co., Inc.) and Sealright (Sealright Co., Inc.). The moment copies are returned to us from the printer we will forward some to you and include our Jobber's Discount Schedule."

PAR. 14. The respondent, Universal Seal Cap Corporation, on March 4, 1937, wrote to the association: "Some time ago you asked me what we would think of a general price increase—I wonder what the discussion and reaction is respecting this point." The association replied: "There are two or three problems in the price structure that we are now faced with. What is the proper differential between regular manila board and color board and, secondly, now that Chicago is going to be opened up for closure caps, what is the proper differential between the No. 2, No. 2 and No. 3 size caps? This matter is having our attention * * *."

PAR. 15. Respondent association on October 7, 1937, wrote to the respondent, Universal Seal Cap Corporation, reminding it that competitor manufacturers were selling white shells and colored shells at the same price "whereas you make a deduction of 15 cents M for the white shells." Universal replied: "I plan to readjust these prices to conform with our competitors * * *."

On October 13, 1937, the association again wrote to the respondent, Universal Seal Cap Corporation: "I think it would be very much to the benefit of the industry if you would comply with the usual custom that is now prevalent and have the same price on white board as colored board."

PAR. 16. Respondent, Universal Seal Cap Corporation, on January 4, 1938, informed the association that should it ship into one of certain "other territories we will use the same price list as now in effect with Kleen Seal (Smith-Lee Co.)."

PAR. 17. The respondent manufacturers entered into agreements and understandings with each other and with the respondent association and its officials in reference to the filing of price lists, invoices, contracts, and other sales data. Prices, discounts, uniform contract terms, dairy ratings and other trade practices and terms of sale were discussed at meetings of the association and many agreements and understandings in relation to such matters were mutually and severally entered into by the respondent members and the association and its officials. In accordance with such agreements and understandings, the respondent members had and observed several identical trade practices and terms of sale; many respondents so had and observed uniform contract terms; certain respondents so had and observed identical cash and/or jobber discounts.

Findings

30 F. T. C.

PAR. 18. The association publishes a rating book in which each dairy in the United States which uses closure caps is rated according to the number of closure caps used annually. This book is called the "Annual Requirement Record." It has been a practice in the industry for manufacturers to enter into contracts with dairies for a specified number of caps to be delivered during a year. The prices charged the dairies vary with the number of caps contracted for. The first edition of the Annual Requirement Record was published in October 1935. The seventh edition, dated November 1, 1940, rated a total of 7,809 dairies.

PAR. 19. Each member of the association furnishes copies of invoices or other information as to sales to individual dairies to the association. The association maintains a card index for each dairy, and each sale by a manufacturer is entered on the dairy's card. As a dairy's purchases increase or decrease, its rating is changed. The association issues supplements to the rating book from time to time. The books are sold to nonmembers at a price of \$25 each. Respondent members were expected to adhere and in the main did adhere to such ratings in making contracts with dairies.

PAR. 20. The rating book rates the dairies in the following brackets:

Less than 100,000	
100,000 to	250,000
250,000 to	500,000
500,000 to	1,000,000
1,000,000 to	2,500,000
2,500,000 to	5,000,000
5,000,000 to	10,000,000
10,000,000 to	40,000,000

and national buyers such as chain dairies or one corporation with several branches.

PAR. 21. The following instructions were issued by the association to the respondent members as to the use of the ratings as set forth in the Annual Requirement Record:

We ask that you adopt the following procedure in the customary situations:

1. When the dairy is listed in the Closure Rating Book, sell it in accordance with your published price for the designated rating.

2. When the dairy is not yet listed in the rating book, request rating from this office, giving us all the information available as to whether the dairy is to hood all of their milk or part of it, and if only part, what grades and your estimate of the quantity required. (Note: if all the milk is to be hooded, we will be influenced in granting the rating from the records that we have in the Disc Bottle Cap Industry.)

3. When the dairy is listed but is selling only a small quantity of special milk in sealed bottles, and decides to sell more of its products in sealed bottles, it is

entitled to a rerating. In such case, this office will do the rerating, being guided with the data we have on Disc caps.

Please note that ratings and reratings are all decided on and issued by the Association office.

If there are any phases of this new Trade Practice that are not clear to you, we urge that you communicate with this office.

PAR. 22. At the time of the second edition of the Annual Requirement Record the association informed the respondent members as follows:

The second edition of the Annual Requirement Record is being mailed today (July 28, 1936). It becomes effective at once.

Beginning in August a list of changes will be issued at the end of each month to everyone who received the books. The plan is to follow these official ratings, and not to make any changes between publications of these monthly lists. This means that contracts are to be taken only in accordance with the dairy's last published rating.

PAR. 23. The respondent manufacturers filed their price lists with the association; this filing of prices was sometimes termed "official filing," by the office of the secretary of the association. The prices so filed were disseminated by the association to the respondent manufacturers. This practice of disseminating such price lists was terminated on December 30, 1940. The respondent manufacturers were expected to abide by their filed or published prices and sell in accordance therewith until new and different prices were so filed by them.

PAR. 24. During the period of the National Recovery Administration the respondent manufacturers filed with the association copies of their invoices and contracts and this practice was continued to the time of these proceedings excepting that respondent, Crown Cork & Seal Co., did not file invoices and the invoices filed by respondent Aluminum Seal Co., contained no reference to prices. Subsequent to January 1941, no price information has been shown on any data filed with the association.

PAR. 25. If any respondent member failed to file his price lists or copies of his invoices or contracts with the association, a representative or official of the association would check with such member and advise him to file such material as soon as possible "so that we may keep our records up to date." A typical communication from the association in checking on such a delinquent member, is in part as follows:

In order that we may do our work thoroughly here in this office, it is necessary that you file with us copies of your contracts. We would, therefore, very much appreciate your forwarding us a list of all your current contracts, together with the dates on which they were entered, as well as the quantity and price for which they were written. We also ask that you forward us copies of all contracts you accept in the future. This will enable us to keep our files and records up to date.

PAR. 26. The association, through its officials, checked the prices shown on each respondent manufacturer's filed invoices and contracts with the respondent manufacturer's filed prices to determine whether the prices in such invoices and contracts were in accordance with the filed prices and the Annual Requirement Record. If a respondent manufacturer's selling prices as shown in his filed invoices and contracts were at variance with his filed prices and the Annual Requirement Record, the association would check with such manufacturer and ask for an explanation for such price differences and remind such respondent manufacturer that all future sales should be made in accordance with the filed prices and the Annual Requirement Record. A typical communication from the association to a respondent manufacturer in this case is in part as follows:

If our work of checking invoices is to be effective so that each member may be competitive with the others, and so that the consumers may make accurate comparisons, it is necessary for Price Lists to be based on the new system.

When the association found the prices on the filed copies of invoices not in conformity with the filed prices, the association would return such copies of invoices "which we believe are in error—will you kindly advise us if this is the fact?"

PAR. 27. The Annual Requirement Record is referred to as respondents' rating book as it contains the official ratings of dairies based on the dairy's annual requirements. Contracts are made by the respondent manufacturers with dairies for annual requirements against which respondent manufacturers make partial shipments. Spot orders are for a definite quantity to be made up and shipped at one time. The ratings are used for contracts only. When a respondent manufacturer enters into such contracts he is expected to, and in the main does, adhere to the dairy ratings as contained in the rating book and such manufacturer is expected to, and in the main does give the dairy customer his filed or published price for that quantity. For example, if a dairy is rated as using a million caps a year, respondent manufacturer is permitted to accept a contract for a million and make partial shipments at the million price against that contract. Respondent manufacturer must not accept a contract, in such circumstances, for more than a million. A spot order basis means the price applies for the quantity of the order shipped at one time and in such cases the rating book does not apply.

PAR. 28. The association maintains a card index for each dairy and each sale by a manufacturer is entered on a dairy's card. As a dairy's purchases increase or decrease, its rating is changed. The association issues supplements to the rating book from time to time. Respondent manufacturers, by agreement, are expected to follow and

generally do follow the instructions of the association that "contracts are to be taken only in accordance with the dairy's last published rating; and if a dairy's rating is changed the association instructs the members to solicit all future orders on the basis of the new rating."

PAR. 29. The respondents classified certain large dairies as national buyers and agreed that national buyers should be sold in accordance with ratings and in accordance with each respondent manufacturer's filed national buyers prices. A memorandum dated April 10, 1936, issued by the association in this case is as follows:

We beg to advise you that the following is the accepted Trade Practice of this Industry in selling National Buyers. It is the unanimous practice of the Industry to sell National Buyers direct at the manufacturers published price. One or two manufacturers in exceptional cases, however, have placed this business through a Jobber, and in such instances the Jobber has been allowed a commission of 5%.

A further memorandum, dated May 18, 1937, issued by the association to its members in connection with the trade practice in selling national buyers is as follows:

Attached you will find a list of National Buyers, all of which at the present time, are rated "S" in the Rating Book.

As you are aware, there are three prices to National Buyers, the price depending on the number of caps each individual plant purchases during a twelve month period. Due to the fact that the "S" rating does not show the price at which caps should be sold according to your present Price List, we have broken the rating into three divisions, as follows:

SY—is a National Buyer using less than 12MM caps in one market. The price of caps to such concerns is \$2.00 according to your present published Price List.

SZ—is a National Buyer using from 12MM caps to 15MM caps in one market. The price of caps to such concerns is \$1.90 according to your present published Price List.

S —is a National Buyer using over 15MM caps in one market. The price of caps to such concerns is \$1.75 according to your present published Price List.

We have gone over all National Buyers listed in the Rating Book and have re-rated them in accordance with the above. The attached list gives you the up-to-date ratings of these concerns and we ask that you sell them accordingly.

PAR. 30. Officials of the association checked the contracts of the respondent members to see that dairies were sold in accordance with their official ratings as set forth in the rating book and also to see that the prices to be charged were in accordance with filed prices. If any variance was found with respect to such ratings and such prices, the association contacted the respondent manufacturer so involved in order that the matter might be corrected or that such manufacturer should be guided in future transactions.

PAR. 31. The association invited the member manufacturers to

complain to the association if another member manufacturer was not abiding by the policies of the association. The constitution of the association contains the following provisions for the filing of complaints with the association:

Section D.—A member, believing himself to have cause to complain of another member in regard to his action in violation of the Association Trade Practices, or other regulations of the Association, shall file such complaint with the manager for investigation, report, and curative action. The complaining member shall receive from the manager in due process a complete statement of the facts and evidence of the case and the disposition made or decision rendered by the manager.

Some members did complain to the association that another member was violating an agreed-upon sales policy, e. g., respondent Cowdrey Products Co., Inc., complained in February 1938, that respondents, Standard Cap & Seal Co., and Smith-Lee Co., had made sales not in conformity with the said companies' published prices. Again the same respondent complained in May, 1938, against respondent, Sealright Co., to which complaint Manager George A. Lincoln of the association replied in part:

* * * I am positive that with the cooperation of Sealright we can correct this situation * * *.

PAR. 32. The association, on July 8, 1937, informed respondents, Mid-West Bottle Cap Co., Sealright Co., Inc., American Seal-Kap Corporation and Smith-Lee Co., Inc.:

The following is the new method for rating of Closures:

"Y"—5 million to 10 million.....	\$2.00 M
"Z"—10 million to 15 million.....	1.90 M
"YZ"—15 million and over.....	1.75 M

Note: 1. All subsidiaries of chain dairies using a total of 10 million or more are rated "Z".

2. Individual companies or branches of chains using 15 million or more are rated "Z".

PAR. 33. The respondents agreed that it was contrary to a trade practice to recognize cooperative buying groups. The association at different times issued memoranda to the respondent members to the effect that the "Independent Dairymen's Council," "The Washington Cooperative Buyers Association" in the State of Washington, and the "Vermont Milk Producers, Inc.," of Burlington, Vt., etc., were cooperative groups and that the respondent members were advised that "Our trade practices do not recognize cooperative buying. Therefore, every dairy should be sold according to its own rating."

PAR. 34. The association, in November 1934, forwarded to the respondent members a "suggested form of standard contract to be used by all members of the industry" and invited comment in reference thereto.

PAR. 35. The following excerpt is from the minutes of meetings of the association of May 24, 1937:

The present contract terms of this Association are that in the event of a price advance the manufacturer gives his contractual customers the same quantity of caps in the succeeding ninety (90) days as the customer purchased in the prior ninety (90) days. This matter was discussed but no decision made, and it was recommended that it be brought up at our next meeting.

PAR. 36. Respondents, Mid-West Bottle Cap Co., Sealright Co., Inc., and Smith-Lee Co., Inc., allowed identical cash discounts of 2% and also allowed identical jobber discounts. American Seal-Kap Corporation allowed jobber discounts but since January 1, 1940, has allowed no cash discounts; respondent, Standard Cap & Seal Co., does not allow any discounts.

On December 21, 1937, respondent, American Seal-Kap Corporation, forwarded the following communication to respondent manager, George J. Lincoln, Jr., of the association:

We recently sold a bill of goods in the Chicago district to a jobber named Otto Hoy, and he has written back complaining about the method we use in figuring discount. It was our understanding that the jobber's discount was to be figured on the net amount of the invoice after deducting freight. But Mr. Hoy mentioned the fact that other manufacturers are not figuring discount in that manner, but are allowing him discount on the original amount of the invoice before deducting freight.

I think it would be a good idea to send a general letter to all manufacturers as to what the proper procedure for discount calculation is.

Manager Lincoln's response to the foregoing is in part as follows:

Replying to your letter of December 21st regarding the method of calculating cash discount, beg to advise that a good deal can be said on both sides of that question.

You realize that if you calculate as you suggest; namely, after freight is deducted, the manufacturer who has the lowest freight thereby allows the larger discount. From a theoretical standpoint, I agree with you 100%, but I will also tell you that from a practical standpoint the way most discounts are figured they are figured on the gross amount of the bill.

What I would suggest doing, with your permission, is to bring this matter up at our next association meeting, and discuss it at that time.

PAR. 37. The association on July 13, 1937, issued a memorandum to the respondent members as follows:

The Kleen-Cap Corporation, and Sealright Co., Inc., have filed with us the following revision in their jobber discount sheet schedule so that it reads as follows:

	Percent
For yearly contracts of less than 100,000.....	15
For yearly contracts of 100,000 to less than 250,000.....	15
For yearly contracts of 250,000 to less than 500,000.....	12
For yearly contracts of 500,000 to less than 1,000,000.....	10
For yearly contracts of 1,000,000 to less than 15,000,000.....	8
For yearly contracts of 15,000,000 and over.....	5

Findings

36 F. T. C.

The above manufacturers have also notified me that they are changing their contract terms to read that in the event of a price advance, the purchaser shall be given the privilege of buying his normal requirements at the current price for a period of two months from the date of the advance, instead of the three month period as at present. (Normal requirements shall be the same number of caps purchased by the purchaser during the two month period prior to the price advance.)

PAR. 38. The association, on January 30, 1939, instructed the respondent members to be prepared to discuss the trade practice of this industry "governing cash discount terms" "at our next meeting."

PAR. 39. Respondent, Cowdrey Products Co., Inc., on May 16, 1940, inquired of the respondent manager of the association, "If your association is planning to call a meeting in the near future to consider a general price increase to be adopted by all manufacturers." The respondent manager replied in part: "* * * we expect to have a closure meeting in the near future, and unquestionably some manufacturers would like to discuss costs." The manager then proceeded to remind the company that this was the manufacturers' individual problem.

PAR. 40. In October 1939, the association announced that:

An analysis of the recent Closure Rating Book gives the following figures:

140 dairies	rated "S"
3,834 dairies	rated "T" (less than 100,000 yearly)
1,122 dairies	rated "U" (100,000 to less than 250,000)
391 dairies	rated "V" (250,000 to less than 500,000)
287 dairies	rated "W" (500,000 to less than a million)
240 dairies	rated "X" (one million to less than five million)
28 dairies	rated "Y" (five million to less than ten million)
1 dairy	rated "Z"

TOTAL 6,043 Dairies in Closure Rating Book.

You will note that there are listed 140 dairies rated "S" or "National Buyers." The reason why the number is so large is that we have counted each national buyer unit using closures as a separate listing. For example, instead of counting National Dairy and its subsidiaries who use closures as one account, each subsidiary has been counted separately.

PAR. 41. The following are typical excerpts from communications sent by the association to respondent members in reference to sales policies, terms, and conditions in the sale of closure milk bottle caps

(a) In checking over your recent contracts we note that you entered a 250 M contract for the Meadowbrook Farm of Watertown, Massachusetts on October 8, 1935. According to our records this concern has only purchased a total of 132 M caps so far this year. This record would indicate that they are not entitled to a 250 M cap contract. May we therefore ask that you kindly forward substantiating evidence showing that they are users of 250 M caps a year.

(b) Under date of February 19 (1936) we wrote your company regarding the billings on several of your invoices. Under the same date we wrote regarding

several contracts which were not entered in accordance with the ratings as given in the Official Rating Book.

(c) Under date of September 18 (1936) you entered a 105 M cap contract for the Pine Bluff Dairy of Bethany, Connecticut. This concern is rated "T" in the rating book and accordingly is not entitled to buy against a 100 M cap contract. Kindly advise us as to why you felt it necessary to enter their contract on a 100 M basis.

(d) I have just been reviewing about 10 or 12 of your recently filed contracts, and almost all of them you have taken at the one million price. Now in doing this you have given this one million contract to dairies that up to the present moment are using annually not over 200 M caps as they are not bottling over 200 M bottles a year. Now, by no stretch of the imagination do we believe that these accounts are going to increase their business to that extent. The effect of this is that it gives very little meaning to your published price, and also personally I think it is unfair to the man who does really live up to his contract with you.

This may give you some temporary advantage but over the long term I think you yourself will be quite embarrassed by this discrimination. (October 4, 1937.)

(e) We would like to call your attention to your contract with the W. A. Ross Dairy of Belmont, Massachusetts. You are selling them on the one million basis whereas this dairy at no time in the past three years has ever used a million caps. As a matter of fact their annual requirements run from 660 M.

We, therefore, ask if you cannot put this account on the proper basis in accordance with your own published price.

(f) In the past few months I have talked with you at various occasions regarding sales or quotations made by your company that are not in accordance with your published prices, and your answer invariably is that yes that is a fact and that you are straightening out this situation. During all this time your competitors have been at disadvantage because you have not been selling in accordance with your announced price and trade practices. I feel that the matter has now come to such a head that you will either have to sell in accordance with your own published price or announce that you do not intend to do so.

(g) We have again checked the purchasers of the subject concerns, on both closure and disc caps, and find that they are entitled to a "W" (500 M) rating on closures due to the fact that they are now going to use closure caps exclusively.

We will grant this rating in the next edition of the Supplement as of February 1, 1940.

(h) We have checked the shipments of the above dairy as requested in your letter of February 26 (1940) and find that they amounted to 100M caps during the twelve months.

From the above record we feel that the subject concern is correctly listed as a "U" buyer and therefore should be sold on that basis.

(i) In further reply to your letter (of October 9, 1940) about the Linden Dairy Farms, Linden, New Jersey, I beg to advise that we are not going to grant any change of rating to this account as their purchases do not warrant it, and according to the rules laid down for us by the Association, we cannot anticipate their purchases and can only grant a rating after the record warrants it.

(j) Replying to your question as to whether or not National Buyers received the minimum price on spot orders, beg to advise that from a practical standpoint I should say that they do. However, I do think it is also a fact that manufac-

turers are very careful to secure contracts from the branches that they are serving.

PAR. 42. The Commission finds from the acts and practices hereinabove described and the circumstances herein set forth that the respondents entered into agreements and combinations to file with respondent association price lists for closure milk bottle caps and to abide by such filed prices until new and different prices were filed by them (which filed prices were disseminated to all members of the respondent association), and to fix and maintain certain uniform discounts on the part of certain respondents, uniform contract terms, uniform trade practices and other conditions for the sale and distribution in commerce of closure milk bottle caps. Pursuant to said agreements and combinations, the respondent association and its representatives have rated and classified over 7,800 dairies located throughout the United States according to the number of closure 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 contract prices at which dairies should be sold. To make more effective the operation and carrying out of said agreements and combinations, respondent manufacturers filed with the respondent association price lists, copies of invoices containing names of purchasers, quantities purchased, and prices therefor, and copies of contracts and conditions of sale. These data filed by the respondent manufacturers were checked by the representatives of the respondent association in accordance with the policy and practice of said association 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, competition among the respondent manufacturers in the sale of closure milk bottle caps in commerce was restrained and prevented.

PAR. 43. As hereinbefore stated, respondents, Aluminum Seal Co., Crown Cork & Seal Co., Inc., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation, did not join in the stipulation as to the facts which was executed by the other respondents herein. Aluminum Seal Co. formerly manufactured so-called closure caps from aluminum foil; however, the company is not now engaged in the manufacture of these aluminum closure caps. These aluminum caps were a distinctive kind of cap and differed from the caps made by the other respondents. Crown Cork & Seal Co., Inc., never furnished invoices to the association; its caps are also a distinctive kind of cap and not similar to the caps manufactured by the other respondents. Universal Seal Cap Corporation and Sanitary Metal Cap Corporation, are both in

bankruptcy and have ceased doing business as manufacturers of closure caps.

CONCLUSION

The 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 competition between and among respondents in the sale of closure milk bottle caps within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in closure 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 answers of the respondents, and a stipulation as to the facts entered into between counsel representing all the respondents except Aluminum Seal Co., Crown Cork & Seal Co., Inc., Sanitary Metal Cap Corporation, and Universal Seal Cap 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 joining in said stipulation findings as to the facts and conclusion based thereon, and an order disposing of the proceeding; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents, National Association of Sanitary Milk Bottle Closure Manufacturers; Stanley Dennis as chairman and George J. Lincoln, Jr., as manager of said association; Daniel A. Mackin, Harvey M. Smith, and Jarvis Williams, Jr., as members of the executive committee of said association; and American Seal-Kap Corporation, Cowdrey Products Co., Inc., Mid-West Bottle Cap Co., Sealright Co., Inc., Smith-Lee Co., Inc., and Standard Cap & Seal Corporation, and respondents' agents, representatives, and employees, in connection with the offering for sale, and distribution of closure milk bottle caps in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into or carrying out, or aiding or abetting the carrying out of any agreement, understanding, combination, conspiracy, or concert of action between or among any two or more of said respondents, with

Order

36 F. T. C.

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 closure milk bottle caps, and from doing any of the following acts or things pursuant thereto:

1. Fixing or maintaining uniform discounts, contract terms, or other conditions for the sale of closure milk bottle caps.

2. Fixing or maintaining quantity prices or price differentials on quantity purchases based upon quantities purchased from all sources as fixed or determined by dairy rating books or other similar devices.

3. Consulting or communicating in any manner with the respondent association, or any of its officials, for the purpose of obtaining consent or agreement relative to prices at which closure milk bottle caps shall be sold.

4. Limiting the quantity of closure milk bottle caps which jobber customers or dairy customers may contract for or purchase from respondent manufacturers.

5. Preventing the sale of closure milk bottle caps to cooperative buying agencies and confining the sale of such products exclusively to jobbers and dairy consumers.

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

7. Filing with the respondent association or with any other medium or central agency, price lists or other information showing current or future prices, terms, or conditions of sale for closure milk bottle caps, with the agreement or understanding, or upon the condition, that such price lists or other information shall not be changed or deviated from until new and different price lists or other information showing current or future prices, terms, or conditions of sale are so filed by respondent manufacturers.

8. Compiling, publishing, or distributing an "Annual Requirement Record" or other similar device for the use of respondent manufacturers, which rates or classifies dairies according to the total number of closure 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 closure milk bottle cap requirements of respective dairies as may enable each manufacturer to check or determine the propriety of any order or contract 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.

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

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

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondents, Aluminum Seal Co., Crown Cork & Seal Co., Inc., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation.

IN THE MATTER OF

FRANK B. MORAN, DOING BUSINESS AS MAGNETIC RAY
COMPANY AND MAGNETIC RAY CLINIC¹

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

Docket 4164. Complaint, June 19, 1940—Decision, June 8, 1943

Where an individual engaged in the manufacture and interstate sale and distribution of his "Magnetic Ray" electrical device, which was a low-frequency coreless solenoid producing a magnetic field of the same frequency as that of the electric circuit into which it was plugged; producing heat approximately equal to a 40-watt bulb, and claimed efficiency of which, in treatment of various disorders and diseases, was entirely dependent upon the magnetic field produced thereby; by means of newspapers, periodicals, circulars, leaflets, pamphlets and other advertising media—

- (a) Represented that the use of said device constituted a cure or remedy and a competent and effective treatment for numerous diseases and disorders, including rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart diseases, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, and tumors; and
- (b) Represented that said "Magnetic Ray" exceeded electricity, light, heat, X-rays, radium rays, violet and ultra-violet rays in therapeutic value, and that the use of his said device stimulated a normal and healthful functioning of the various organs and glands of the body, equalized the circulation, relieving congestion or lack of blood supply in any part of the body, produced marked relaxation, relieved pain and muscular and nervous tension, and stimulated rapid increase in the oxidation and elimination of accumulated poisons, thereby removing the condition of autotoxemia;

The facts being that the device in question, or the magnetic field produced thereby, had no effect upon the body or any living organism, or therapeutic value in the treatment of any disease or disorder, did not exceed electricity or the other named rays in therapeutic value, and did not accomplish the other results claimed;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and of inducing it, because of said belief, to purchase his said device:

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

As respects the therapeutic value of a so-called "magnetic ray" electrical device, which was a low-frequency coreless solenoid producing a magnetic field of the same frequency as that of the electric circuit into which it was

¹ Findings as to the facts and order to cease and desist issued by the Commission on December 23, 1941 (not published), were vacated and set aside and case was reopened for taking of testimony on May 27, 1942. (See 34 F. T. C. 1538.)

Complaint

plugged, producing heat approximately equal to a 40-watt bulb, and with claimed efficiency entirely dependent upon the magnetic field produced thereby: expert testimony established what is a recognized and accepted principle in medical science, namely, that magnetic fields are without therapeutic value, and testimony of two physicians, one the seller of the device, as to beneficial results claimed to have been obtained in their practice through use thereof, and of several members of the lay public, who testified to certain benefits which they claimed to have derived from it, was at such variance with generally accepted and recognized scientific opinion that its accuracy was open to serious question, and was insufficient to overcome the expert testimony introduced at the instance of the Commission.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Donovan Divet and *Mr. Edw. W. Thomerson* for the Commission.

Thompson & Meek and *Mr. Paul McCarroll*, of Dallas, Tex., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Frank B. Moran, an individual trading and doing business under the names of Magnetic Ray Co. and Magnetic Ray Clinic, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Frank B. Moran, is an individual, trading and doing business under the names of Magnetic Ray Co. and Magnetic Ray Clinic, and having its office and principal place of business at 2023 Main Street, in the city of Dallas, State of Texas.

PAR. 2. Respondent is now and for several years last past has been engaged in the manufacture and in the sale and distribution of an electrical device designated as "Magnetic Ray" for use in the treatment of various ailments and diseases of the human body. The respondent causes said device, when sold, to be shipped from his said place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device by the United States mails and by various other

means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said device; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said device in commerce, as commerce is defined in the Federal Trade Commission Act. By means of false, misleading, and deceptive statements and representations contained in false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers and periodicals and by circulars, leaflets, pamphlets, and other advertising literature, the respondent has represented and now represents:

1. That the use of respondent's device, "Magnetic Ray," provides a cure or remedy for rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, disorders of digestion, constipation, biliousness, hemorrhoids, varicose veins and ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, neurasthenia, anemia, debility, catarrhal conditions, bronchitis, functional heart troubles, obesity, ulcers of the stomach and duodenum, low blood pressure, vertigo, epilepsy, lumbago, impotence, painful or irregular menstruation, catarrhal deafness, colds, sinus troubles, tuberculosis, and tumors, and constitutes a safe, scientific, competent, and effective treatment for such diseases and disorders.

2. That respondent's device, "Magnetic Ray," far exceeds electricity, light, heat, X-rays, radium rays, violet and ultra-violet rays in therapeutic value.

3. That the use of respondent's device stimulates a normal and healthful functioning of the various organs and glands of the body.

4. That the use of respondent's device equalizes the circulation of the human blood, relieving congestions or lack of blood supply in any part of the body, relieves pain, produces marked relaxation, and relieves muscular and nervous tension.

5. That the use of respondent's device stimulates rapid increase in the oxidation and elimination of accumulated poisons, thereby removing the condition of autotoxemia.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact respondent's device, "Magnetic Ray," is a low frequency coreless solenoid which produces a magnetic field of the same frequency as that of the electric circuit to which it is attached when plugged into an electric current, and does not produce magnetic rays and has no therapeutic value or use in the treatment or alleviation of any diseases or ailments of the human body.

The use of respondent's device does not provide a cure or remedy for rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, disorders of digestion, constipation, biliousness, hemorrhoids, varicose veins and ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, neurasthenia, anemia, debility, catarrhal conditions, bronchitis, functional heart troubles, obesity, ulcers of the stomach and duodenum, low blood pressure, vertigo, epilepsy, lumbago, impotence, painful or irregular menstruation, catarrhal deafness, autotoxemia, colds, sinus troubles, tuberculosis, or tumors, and the use of said device does not constitute a safe, scientific, competent or effective treatment for such diseases and disorders.

The heat produced by respondent's device is approximately equal to that produced by a 40-watt bulb, and consequently, would have no therapeutic value whatsoever and would not be comparable to X-ray, radium rays, violet and ultraviolet rays. The use of said device would not stimulate normal and healthful functioning of the various organs and glands of the body. Said device would have no effect upon the circulation of the human blood and would not relieve congestion or lack of blood supply in any part of the body. The use of respondent's device would not relieve pain, produce relaxation or relieve muscular or nervous tension and will not cause any increase in the oxidation or elimination of accumulated poisons.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said device has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and induces a portion of the purchasing public because of such erroneous and mistaken belief to purchase said device.

PAR. 6. The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 19, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Frank B. Moran, an individual, doing business as Magnetic Ray Co. and as Magnetic Ray Clinic, 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 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 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, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being fully advised in the premises, on December 23, 1941, issued and subsequently served upon the respondent its findings as to the facts and conclusion based thereon and an order requiring the respondent to cease and desist from the practices charged in the complaint.

Thereafter, respondent filed with the Commission a petition asking that the proceeding be reopened and a rehearing granted therein, and on May 27, 1942, the Commission entered its order vacating the findings as to the facts and order to cease and desist theretofore issued, and reopening the proceeding for the taking of such further testimony and other evidence as might be offered by respondent in opposition to the complaint or by counsel for the Commission in rebuttal of such additional evidence. Pursuant to this order, additional hearings were held before the trial examiner, at which hearings further testimony was introduced on behalf of respondent. Subsequently, the proceeding again came on for hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, original and supplemental reports of the trial examiner upon the evidence and the exceptions to the original report, original and supplemental briefs in support of the complaint and original brief in opposition thereto (no supplemental brief having been filed on behalf of respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its modified findings as to the facts and its conclusion based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Frank B. Moran, is an individual, trading and doing business under the names Magnetic Ray Co. and Magnetic Ray Clinic, with his office and principal place of business located at 2023 Main Street, Dallas, Tex. For several years last past

respondent has been engaged in the manufacture and in the sale and distribution of a device designated by him as "Magnetic Ray" and intended for use in the treatment of various ailments and diseases of the human body.

PAR. 2. Respondent causes and has caused his device, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in various other States of the United States. Respondent maintains and has maintained a course of trade in his device in commerce among and between various States of the United States.

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

1. That the use of respondent's device constitutes a cure or remedy and a competent and effective treatment for rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, golter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart disease, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, and tumors.

2. That respondent's device exceeds electricity, light, heat, X-rays, radium rays, violet rays, and ultra-violet rays in therapeutic value.

3. That the use of respondent's device stimulates a normal and healthful functioning of the various organs and glands of the body.

4. That the use of respondent's device equalizes the circulation of the blood, relieving congestion or lack of blood supply in any part of the body, relieves pain, produces marked relaxation, and relieves muscular and nervous tension.

5. That the use of respondent's device stimulates rapid increase in the oxidation and elimination of accumulated poisons, thereby removing the condition of autotoxemia.

PAR. 4. Respondent's device is a coil of copper wire covered with a leather material and equipped with an electric wire and plug for connecting the device with an ordinary electric light socket. The device is a low-frequency coreless solenoid which produces a magnetic field of the same frequency as that of the electric circuit to which it is connected. Respondent's claims that the device possesses therapeutic

value are based entirely upon the fact of this magnetic field. While the device produces heat approximating that produced by a 40-watt electric light bulb, the heat is incidental to the operation of the device and is not claimed by respondent to possess any therapeutic value.

To undergo treatment with the device, the patient merely suspends it over or around the affected area of the body. For example, if it is desired to treat the abdomen, the device is placed around that portion of the body somewhat in the nature of a belt. The principal theory upon which respondent asserts the therapeutic value of the device is that the tissue and organs of the body react to the magnetic field produced by the device and that, in consequence, there is an increased circulation of blood to the different parts of the body and the elimination of poisons or toxins from the body is facilitated.

The expert testimony introduced at the instance of the Commission establishes that magnetic fields are without therapeutic value. This is a recognized and accepted principle in medical science. The Commission therefore finds that respondent's device is incapable of affecting the tissues or organs of the body, or increasing the circulation of the blood, or assisting in the elimination of toxins from the body. The device does not constitute a cure or remedy for rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart diseases, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, or tumors, nor does it possess any therapeutic value in the treatment of these or any other ailments or conditions of the human body.

The device does not exceed or equal electricity, light, heat, X-rays, radium rays, violet rays, or ultra-violet rays in therapeutic value, and in fact is not comparable with such agencies. It is incapable of stimulating a normal or healthful functioning of any of the organs or glands of the body, or equalizing the circulation of the blood, or relieving congestion or the lack of blood supply in any part of the body. It does not relieve pain, produce relaxation, or relieve muscular or nervous tension. The device is likewise incapable of stimulating any increase in the oxidation or elimination of poisons in the body, or of removing the condition of autotoxemia.

The principal testimony offered on behalf of respondent consisted of the testimony of respondent himself, who is a physician, and that of another physician, both of whom testified to beneficial results alleged to have been obtained in their practice through the use of the device.

Several members of the lay public who had used the device also testified to certain benefits which they claimed to have derived from it. After consideration of all of this testimony, the Commission is of the opinion and finds that it is at such variance with generally recognized and accepted scientific opinion that its accuracy is open to serious question, and that it is insufficient to overcome the expert testimony introduced at the instance of the Commission.

PAR. 5. The Commission therefore finds that the representations made by respondent with respect to his device, as set forth in paragraph 3 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 6. The Commission finds further 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 with respect to the therapeutic properties and value of respondent's device, and the tendency and capacity to cause such portion of the public to purchase the 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.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence 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 the original report, original and supplemental briefs in support of the complaint, and original brief in opposition thereto (no supplemental brief having been filed on behalf of respondent and oral argument not having been requested); and the Commission having made its modified 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, Frank B. Moran, individually and trading as Magnetic Ray Co. and as Magnetic Ray Clinic, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connec-

tion with the offering for sale, sale or distribution of respondent device designated "Magnetic Ray," or any other device of a 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 advertisement by means of the United States mails, or by any means in commerce, and "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication,

(a) That respondent's device constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of, rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart diseases, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, tumors, or any other ailment or condition of the human body;

(b) That respondent's device exceeds, equals, or is comparable with electricity, light, heat, X-rays, radium rays, violet rays, or ultra-violet rays in therapeutic value;

(c) That the use of respondent's device stimulates a normal or healthful functioning of any of the organs or glands of the body;

(d) That the use of respondent's device equalizes the circulation of the blood, relieving congestion or lack of blood supply in any part of the body; or that such use relieves pain, produces relaxation, or relieves muscular or nervous tension; or

(e) That the use of respondent's device stimulates any increase in the oxidation or elimination of poisons in the body, or that it removes the condition of autotoxemia.

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 device 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.

Syllabus

IN THE MATTER OF

FRATELLI BRANCA & 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 4828. Complaint, Aug. 31, 1942—Decision, June 9, 1943*

Where a corporation engaged in competitive interstate sale and distribution of its "Fernet-Branca" medicinal preparation; by advertisements in Italian and in English in newspapers, periodicals, radio continuities, and other advertising, directly and by implication—

- (a) Represented that use of its said preparation was a remedy and effective treatment for stomach disorders, indigestion, headaches, insomnia, liver ailments, and constipation;
- (b) Represented that it regulated the stomach, bowels, and intestines, relieved overfullness of the stomach, regulated the bodily functions, and aided in digestion;
- (c) Represented that it gave the body resistance to the inclemency of the weather, acted as a digester, was a bile stimulant, and was of value in the treatment of menstrual disturbances; and
- (d) Represented that it was an effective tonic for convalescents; that use thereof would promote, maintain, and improve health generally, and that by taking it regularly all common ailments might be avoided;

The facts being that the product in question—essentially an appetizer, alcoholic stimulant, and laxative when taken as directed—had no therapeutic value as a tonic for convalescents in excess of that afforded by a bitter appetizer, and had no such value in the treatment of constipation in excess of affording temporary relief; and did not justify the other claims above set forth; and

- (e) Failed to reveal facts material in the light of said misrepresentations, or with respect to the consequences which might result from use thereof under usual and prescribed conditions, in that its use in the dosage indicated was potentially dangerous when taken by one suffering from abdominal pains or other symptoms of appendicitis, and in that frequent and continued use thereof might result in dependence on laxatives;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and into the purchase of substantial quantities of its preparation, with result that trade was diverted unfairly to it from its competitors, many of whom do not misrepresent the therapeutic value and efficacy of their products, to their injury:

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

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

Mr. William L. Taggart for the Commission.

Frank, Weil & Strouse, of New York City, for respondent.

Complaint

36 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 Fratelli Branca & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fratelli Branca & Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 12-14 Desbrosses Street, in the city of New York, State of New York.

PAR. 2. Respondent for some time past has been engaged in the sale and distribution of a medicinal preparation designated as "Fernet-Branca."

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

PAR. 3. In the course and conduct of its said business, respondent is now and has been for more than 5 years last past, engaged in substantial competition with other corporations and with firms, partnerships, and individuals likewise engaged in the business of advertising and selling in commerce, among and between the various States of the United States and in the District of Columbia, various medicinal products and preparations recommended for the treatment of the same diseases and conditions as respondent.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said preparation by United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating and has caused, and is now causing the dissemination of false advertisements concerning its said preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities and other advertising means, are the following, which are translations of radio continuities and other advertising in the Italian language:

When you have disorder in the stomach a small amount of Fernet-Branca in a cup of hot coffee will relieve you.

Fernet-Branca is the best remedy for overfulness of the stomach and indigestion.

Stimulates the appetite, aids digestion, regulates the bowels.

Has the properties of giving to the organism the resistance necessary to combat the winter snares.

Constant use of F-B helps the digestion and regulates the intestines.

Only Fernet-Branca guarantees its unsurpassed qualities as a digester; its incomparable qualities as a regulator.

Drink it regularly, your health will gain by it.

When you are tormented by poor digestion, headache or insomnia, drink Fernet-Branca—your headache will leave, your insomnia disappear.

R. C. of New York must have a liver complaint since the ordinary medicines to correct gas and acidity don't seem to help. I think he should have his gall-bladder X-rayed. He can take Fernet-Branca with orange juice or salt water.

Fernet-Branca contains some substances which stimulate somewhat the function of the bile.

Mrs. J. P. writes: "I am writing you two lines." And she does write just two lines. She suffers from periodical disturbances. In these cases, it is necessary to know certain things. Has she any children? Has she any pains? Are her menses late or scarce? She should have written me another line and given me a clear picture of her conditions. At any rate, in these cases, gland extracts and hot baths are useful. Also, if she cares, some small glass of Fernet-Branca each morning, taken with orange juice, is useful.

B. V. of Brooklyn has a boy suffering from chronic constipation. He moves his bowels every 8 days. The father who writes to me says that he uses Fernet-Branca for his digestion, to his advantage. Yet it is strange that he has never thought of using it for the boy to correct the constipation.

Mrs. L. E. has had influenza and is now convalescing. Her doctor has done well to advise her to use Fernet-Branca. This bitter is a good tonic during convalescence.

Every family should have a supply of Fernet-Branca and this stomach-digestive should be on the table during every meal so that every member of the family can take it according to how he feels.

An important aid in promoting and maintaining good health.

If your health is poor—take Fernet-Branca.

Fernet-Branca * * * Avoid all common ailments by taking regularly.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others of similar import not set forth herein, all of which purport to be descriptive of the therapeutic properties

of respondent's preparation, respondent represents, directly and by implication, that the use of its preparation "Fernet-Branca" is a cure and remedy for and constitutes a competent and effective treatment of stomach disorders, indigestion, headaches, insomnia, liver ailments, and constipation; that it regulates the stomach, bowels, and intestines and relieves overfulness of the stomach; that it gives the body resistance to the inclemency of the weather; that it acts as a digester, regulates the bodily functions and aids in digestion; that it is a bile stimulant; that it is of value in the treatment of menstrual disturbances; that it is an effective tonic for convalescents and its use will promote, maintain, and improve health generally and by taking said preparation regularly all common ailments may be avoided.

PAR. 6. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's medicinal preparation is not a cure or remedy for and does not constitute a competent and effective treatment of stomach disorders, indigestion, headaches, insomnia, liver ailments, and constipation. It will not regulate the stomach, bowels, and intestines, nor will it relieve overfulness of the stomach. It will not give the body resistance to the inclemency of the weather. It will not act as a digester, regulate the bodily functions, nor will it aid in digestion. It will not act as a bile stimulant. It has no value in the treatment of menstrual disturbances. Its use will not promote, maintain, and improve health generally and none of the common ailments may be avoided by the regular use of said preparation. It has no therapeutic value as a tonic for convalescents in excess of that afforded by a bitter appetizer. Said preparation is essentially a laxative and has no therapeutic value in the treatment of stomach disorders, indigestion, headache, insomnia, liver ailments, and menstrual disturbances and has no therapeutic value in the treatment of constipation in excess of affording temporary relief.

PAR. 7. 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, respondent's said preparation is an irritant laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, dis-

seminated as aforesaid, with respect to its said preparation, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of substantial quantities of respondent's preparation, with the result that trade has been diverted unfairly to the respondent from its competitors and as a result injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. Among the competitors of respondent as referred to in paragraph 3 herein are many who do not falsely represent the therapeutic value and efficacy of their various medicinal preparations.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 31st day of August 1942, issued and served its complaint in this proceeding upon said respondent, Fratelli Branca & Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, in violation of the provisions of said act. On November 3, 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 executed by the respondent and its counsel, Frank, Weil and Strouse, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises,

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Fratelli Branca & Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 12-14 Desbrosses Street in the city of New York, State of New York and has for some time past been engaged in the sale and distribution of a medicinal preparation designated as Fernet-Branca; respondent causes its said preparation, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in the various other States of the United States and in the District of Columbia and maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States and the District of Columbia. In the course and conduct of its business respondent is now, and has been for more than 5 years last past, engaged in substantial competition with other corporations and with firms, partnerships and individuals likewise engaged in the business of advertising and selling in commerce, among and between the various States of the United States and in the District of Columbia, various medicinal products and preparations recommended for the treatment of the same diseases and conditions as respondent. Among such competitors are many who do not falsely represent the therapeutic value and efficacy of their various medicinal preparations and products.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated and has caused the dissemination of false advertisements concerning its said preparation by United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and has caused the dissemination of false advertisements concerning its said preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities and other advertising means, are the following, which are translations of advertising in the Italian language, as well as advertising in the English language:

When you have disorder in the stomach a small amount of Fernet-Branca in a cup of hot coffee will relieve you.

Fernet-Branca is the best remedy for overfulness of the stomach and indigestion.

Stimulates the appetite, aids digestion, regulates the bowels.

Has the properties of giving to the organism the resistance necessary to combat the winter snares.

Constant use of F-B helps the digestion and regulates the intestines.

Only Fernet-Branca guarantees its unsurpassed qualities as a digester; its incomparable qualities as a regulator.

Drink it regularly, your health will gain by it.

When you are tormented by poor digestion, headache or insomnia, drink Fernet-Branca - your headache will leave, your insomnia disappear.

R. C. of New York must have a liver complaint since the ordinary medicines to correct gas and acidity don't seem to help. I think he should have his gall-bladder X-rayed. He can take Fernet-Branca with orange juice or salt water.

Fernet-Branca contains some substances which stimulate somewhat the function of the bile.

Mrs. J. P. writes: "I am writing you two lines." And she does write just two lines. She suffers from periodical disturbances. In these cases, it is necessary to know certain things. Has she any children? Has she any pains? Are her menses late or scarce? She should have written me another line and given me a clear picture of her conditions. At any rate, in these cases, gland extracts and hot baths are useful. Also, if she cares, some small glass of Fernet-Branca each morning, taken with orange juice, is useful.

B. V. of Brooklyn has a boy suffering from chronic constipation. He moves his bowels every 8 days. The father who writes to me says that he uses Fernet-Branca for his digestion, to his advantage. Yet it is strange that he has never thought of using it for the boy to correct the constipation.

Mrs. L. E. has had influenza and is now convalescing. Her doctor has done well to advise her to use Fernet-Branca. This bitter is a good tonic during convalescence.

Every family should have a supply of Fernet-Branca and this stomachic-digestive should be on the table during every meal so that every member of the family can take it according to how he feels.

An important aid in promoting and maintaining good health.

If your health is poor - take Fernet-Branca.

Fernet-Branca * * * Avoid all common ailments by taking regularly.

PAR. 3. By the use of the statements and representations herein-above set forth, and others of similar import not set forth herein, all of which purport to be descriptive of the therapeutic properties of respondent's preparation, respondent represented, directly and by implication, that the use of its preparation "Fernet-Branca" is a cure and remedy for and constitutes a competent and effective treatment of stomach disorders, indigestion, headaches, insomnia, liver ailments and constipation; that it regulates the stomach, bowels and intestines and relieves overfulness of the stomach; that it gives the body resistance to the inclemency of the weather; that it acts as a digester; regulates the bodily functions and aids in digestion; that it is a bile

stimulant; that it is of value in the treatment of menstrual disturbances; that it is an effective tonic for convalescents and its use will promote, maintain and improve health generally and by taking said preparation regularly all common ailments may be avoided.

The aforesaid statements and representations are grossly exaggerated, false and misleading; in truth and in fact said medicinal preparation is not a cure or remedy for and does not constitute a competent and effective treatment of stomach disorders; indigestion, headaches, insomnia, liver ailments, and constipation; it will not regulate the stomach, bowels, and intestines, nor will it relieve overfulness of the stomach; it will not give the body resistance to the inclemency of the weather; it will not act as a digester, regulate the bodily functions, nor will it aid in digestion; it will not act as a bile stimulant; it has no value in the treatment of menstrual disturbances; its use will not promote, maintain, and improve health generally and none of the common ailments may be avoided by the regular use of said preparation; and it has no therapeutic value as a tonic for convalescents in excess of that afforded by a bitter appetizer.

Said preparation is essentially an appetizer, an alcoholic stimulant and a laxative when taken as directed, in the dosage of one to two tablespoonfuls three times a day, and has no therapeutic value in the treatment of stomach disorders, indigestion, headache, insomnia, liver ailments, and menstrual disturbances and has no therapeutic value in the treatment of constipation in excess of affording temporary relief.

PAR. 4. The advertisements set forth herein, disseminated as aforesaid, constitute false and misleading advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, the use of said preparation in the dosage above indicated, is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis; and its frequent or continued use may result in dependence on laxatives.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to its said preparation, 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 false statements, representations, and advertisements were true and into the purchase of substantial quantities of respondent's prepara-

875

Order

tion, with the result that trade has been diverted unfairly to the respondent from its competitors and as a result injury has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia; that among the competitors of respondent as referred to in paragraph 1 herein are many who do not falsely represent the therapeutic value and efficacy of their various medicinal preparations.

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Fratelli Branca & Co., Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its preparation designated "Fernet-Branca," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement 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 is a cure or remedy for stomach disorders, indigestion, headaches, insomnia, or liver ailments or that it constitutes a competent or effective treatment for any of such diseases or conditions.

b. That respondent's preparation will regulate the stomach, bowels, and intestines or relieve overfulness of the stomach.

c. That respondent's preparation will give the body resistance to the inclemency of the weather or promote, maintain, or improve health generally.

d. That respondent's preparation will aid digestion, act as a digester, regulate the body functions, or act as a bile stimulant.

e. That respondent's preparation has any therapeutic value in the treatment of menstrual disturbances.

f. That respondent's preparation has any therapeutic value as a tonic for convalescents in excess of that afforded by a bitter appetizer.

g. That respondent's preparation has any therapeutic value in the treatment of constipation in excess of providing an evacuation of the lower intestinal tract when taken in the dosage of one to two table-spoonfuls three times a day.

h. That by the regular use of respondent's preparation all common ailments may be avoided.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that respondent's preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis; *provided, however*, That if the directions for use wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement, "CAUTION: Use only as directed."

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 respondent's preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof or which fails to comply with the requirements set forth in paragraph 2 hereof.

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

Complaint

IN THE MATTER OF

MRS. ALMA LOUGHRAN AND LEE R. LOUGHRAN, TRADING AS ALMA'S HOME MADE CANDIES

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

Docket 4409. Complaint, Dec. 9, 1940—Decision, June 16, 1943

Where two individuals engaged in the manufacture and competitive interstate sale and distribution, to wholesalers and jobbers, of candy—

Sold a 2-pound box of chocolates packed in a miniature cedar chest along with push cards, which they supplied therewith in some instances and in others forwarded separately to wholesalers and jobbers, for use under a plan by which the customer selecting by chance from the 50 feminine names displayed on the card the name corresponding to that concealed under the card's master seal, received the candy and chest, and paid for the chance the amount indicated by the number concealed by the disc below the names selected; and

Thereby supplied to and placed in the hands of dealers means of conducting lotteries in the sale of their aforesaid products under said plan, involving a game of chance to obtain merchandise at much less than its normal retail price, contrary to an established policy of the United States Government, and in competition with those who do not use any such method;

With result that many persons were attracted by their said sales plan and the element of chance involved therein, and were thereby induced to buy and sell their products in preference to those of their aforesaid competitors, whereby substantial trade was diverted unfairly from them to individuals aforesaid:

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

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. L. P. Allen, Jr., *Mr. J. V. Mishou*, and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Mr. J. R. Mulliner, of Salt Lake City, Utah, 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 Mrs. Alma Loughran and Lee R. Loughran, individually, and trading as Alma's Home Made Candies, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

Complaint

36 F. T. C.

PARAGRAPH 1. Mrs. Alma Loughran and Lee R. Loughran are individuals, trading as Alma's Home Made Candies, with their principal office and place of business located at 2737 West Madison Street, Chicago, Ill. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of candy, confectionery products, and other merchandise to wholesale dealers, jobbers, and retail dealers. The respondents cause, and have caused, said products when sold to be transported from their principal place of business in the city of Chicago, Ill., to purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now, and for more than 3 years last past has been, a course of trade by respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are, and have been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell, and have sold, to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed or assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of a cedar chest with two pounds of chocolates therein together with a device commonly called a push card. The said push card bears 50 feminine names with ruled columns on the face thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 50 partially perforated disks, on the face of each of which is printed the word "push." Each of such disks is set under one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The purchaser pays in cents the amount of the number punched from the said card up to and including the number 10. Purchasers punching numbers over 10 pay only 10 cents. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives the said cedar chest filled with chocolate candy. The push card bears a legend or instructions as follows:

885

Complaint

L—U—C—K—Y ?

This beautiful Cedar Chest full to the brim with 2 lbs. of Alma's delicious home made chocolates. Practical for a hundred different uses and a most attractive gift article.

Pick your favorite girls name and if it corresponds with name under seal you are the winner.

Nos. 1 to 10, Pay amount of number drawn

Nos. higher than 10 pay only 10¢.

The sales of respondents' products by means of said push card are made in accordance with the above-described legend or instructions. The amount said purchasers are to pay for, and who is to receive, said cedar chest are thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards for use in the sale and distribution of their products 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 products by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondents' said products expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their products and the sale of said products by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 9, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Mrs. Alma Loughran and Lee R. Loughran, individually, and trading as Alma's Home Made Candies, 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 that act. No answer was filed by respondents. Subsequently, 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 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, 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 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, Mrs. Alma Loughran and Lee R. Loughran, are individuals, trading as Alma's Home Made Candies, with their principal office and place of business located at 2737 West

Madison Street, Chicago, Ill. Respondents are now and since November 1937 have been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between various States of the United States.

PAR. 3. Respondents are and have been in substantial competition with other individuals, and with partnerships and corporations, engaged in the sale and distribution of candy in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business, respondents sell and have sold to wholesale dealers and jobbers an assortment of candy involving the use of a game of chance, gift enterprise, or lottery scheme when such candy is sold and distributed by the retail dealer to the consuming public. This assortment consists of a 2-pound box of chocolates packed in a miniature cedar chest. In connection with this package of candy, respondents supply a device commonly known as a push card. In some instances the push cards are packed with the candy, and in other instances are forwarded by respondents to the wholesalers or jobbers in a separate shipment.

The push card bears 50 feminine names, and under each name is a partially perforated disk, on the face of which is printed the word "Push." Concealed within each disk is a number, which is disclosed only when the disk is pushed or separated from the card. The amount paid by each person who pushes one of the disks is determined by the number concealed within the disk. For example, a person pushing a disk revealing the number 8 would pay 8 cents. Persons pushing numbers higher than 10, however, pay only 10 cents. The push card also has a large master seal, under which is concealed a feminine name corresponding to one of the names appearing on the face of the card. After all of the disks have been pushed, the master seal is removed or broken, and the person who selected the name corresponding to the name under the master seal receives the box of chocolates and the cedar chest. The amount to be paid by each person pushing a disk and the question as to which of such persons receives the candy and cedar chest are thus determined wholly by lot or chance.

PAR. 5. Retail dealers who purchase respondents' products from wholesalers and jobbers sell such products to the consuming public in accordance with the sales plan or method described above. Respondents thus supply to and place in the hands of others the means of

Order

36 F. T. C.

conducting lotteries in the sale of their products. The use by respondents of this sales plan or method to promote the sale of their products, and the sale of such products by dealers to the consuming public through the use and by the aid of such sales plan or method, are practices of a sort which are contrary to an established public policy of the Government of the United States.

PAR. 6. The sale of candy to the consuming public by the plan or method described above involves a game of chance or the sale of a chance to obtain merchandise at prices which are much less than the normal retail price of such merchandise. Among respondents' competitors are those who do not use such method, or any method involving a game of chance or lottery scheme. Many persons are attracted by the sales plan or method employed by respondents and by the element of chance involved therein, and are thereby induced to buy and sell respondents' products in preference to the products of respondents' competitors who do not use the same or any equivalent method. The use of such method by respondents has the tendency and capacity to divert, and has diverted, substantial trade unfairly to respondents from such competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal 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 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 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, Mrs. Alma Loughran and Lee R. Loughran, individually, and trading as Alma's Home Made Candies, 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

885

Order

of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or other lottery devices, either with merchandise or separately, which are to be used or may be used in the sale or distribution of respondents' merchandise or any merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or distributing candy or other merchandise so packed and assembled that sales of such candy or other merchandise to the public are to be made or, due to the manner in which such candy or other merchandise is packed and assembled at the time it is sold by respondents, may be made by means of a game of chance, gift enterprise, or lottery scheme.

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

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

IN THE MATTER OF

KAIDEN-KAZANJIAN STUDIOS, INC., ALSO TRADING AS
KEYSTONE NEWS & PHOTO SERVICE, FRANCES
KAIDEN, AND ARAM KAZANJIAN

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

Docket 4812. Complaint, Aug. 14, 1942—Decision, June 16, 1943

Where a corporation and the two officers in control of its sales policies and practices, engaged in interstate sale and distribution of photographs and so-called "Goldtone Miniatures" made therefrom—

- (a) Made use of words "News and Photo Service" in their trade name which they displayed on their letter heads, together with legend "Supplying Photographs to Newspapers, Magazines, and Trade Publications, including" a list of nearly 60 newspapers published in various cities, and on cards supplied their representatives set forth aforesaid trade name and statement "Photographers of National Personalities," and requested persons, through their agents, on occasion, to sit for photographs which they assertedly desired to have available for publicity purposes;

The facts being they were not one of those associations variously known as "Press," "Press Service," "News Service," etc., which perform distinct and notable public service in the gathering and dissemination of news, and possess valuable good-will and high prestige, and many of which operate photographic departments in connection with their news-gathering functions, but employed aforesaid trade name as a means of enabling them to make contact with prospective purchasers; while they sold glossy prints or supplied them to publications from their "library," said business amounted to only approximately 5 percent of their gross business, was incidental only to business of corporation, i. e., sale of photographs and miniatures to general public, and would not warrant representation they were engaged in business or service of obtaining photographs for use with news articles or publicity items for newspapers or periodicals; and their use on printed matter of names of newspapers was without permission; and

- (b) Represented to prospective purchasers, through letters and circulars, that they had made a "Goldtone Miniature" from one of prospect's negatives, admirably suited for said purpose, which had been entered in an exhibit conducted by the corporation, and that said exhibit having been concluded, miniature in question—regularly priced at \$50—could be purchased for \$12.50;

The facts being that their so-called "Goldtone Miniature" was not a genuine "Goldtone" print, produced by use of a toning paint employing salts of chloride of gold, considerably more expensive than the black and white sepia process; the so-called exhibit consisted of a hundred or more miniatures kept on display in their waiting room, open to the public on Saturday mornings in spring and fall, two larger "exhibitions" including no miniatures of prospective purchasers in other states to whom letters and circulars were mailed; their negatives were largely suitable for miniatures, and those concerned were made to sell, not for \$50, but for \$12.50, their regular price;

Complaint

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, thereby inducing its purchase of their products:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Marshall Morgan for the Commission.

Mr. Herbert A. Kaiden, 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 Kaiden-Kazanjian Studios, Inc., a corporation, also trading as Keystone News & Photo Service, and Frances Kaiden, as president and secretary of Kaiden-Kazanjian Studios, Inc., and also trading individually, as Keystone News & Photo Service, and Aram Kazanjian, as vice president and treasurer of Kaiden-Kazanjian Studios, Inc., and also trading individually, as Keystone News & Photo Service, 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, Kaiden-Kazanjian Studios, Inc., hereinafter referred to as corporate respondent, is a corporation, organized and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 21 West Forty-sixth Street, New York City, and trading also from said address as Keystone News & Photo Service.

Individual respondents, Frances Kaiden and Aram Kazanjian, are president and secretary, and vice president and treasurer, respectively, of respondent corporation, and they, in conjunction with each other, direct and control the sales policies and practices of the corporate respondent and of Keystone News & Photo Service, each operated as alleged from the same New York address.

PAR. 2. Respondents are engaged in the sale and distribution of photographs, and miniatures made therefrom, designated as "Gold-tone-Miniatures." Respondents sell and distribute such products to customers located in various States of the United States, and cause, and have caused, their said products, when sold, to be transported from their said place of business in New York to the purchasers

Complaint

36 F. T. C.

thereof located in various States of the United States other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs and miniatures in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, as described herein, respondents, for more than 3 years last past, have made, and are now making, various false representations concerning the purpose for which said photographs and negatives are desired to enable them to make original contacts with prospective customers, and as to the quality, merits, and prices of their said miniatures, as hereinafter alleged. Said false representations are, and have been, made by means of letters, circulars, and other printed and written matter distributed among customers and prospective customers, and by oral statements made to customers and prospective customers by respondents and their representatives.

PAR. 4. For the purpose of obtaining negatives from which to produce and sell photographs and miniatures, respondents have falsely represented to numerous members of the purchasing public that they conduct a news and photo service, operating under the name of Keystone News & Photo Service, and that they are in touch with and assist in handling various publicity features for the press. Members of the purchasing public thus contacted by respondents are thereupon requested to sit for photographs under the guise that the organization desires to have pictures of them available for use in connection with the publication of a newspaper or magazine article. Customers and prospective customers are given the general impression that, by reason of the newspaper and magazine connections of Keystone News & Photo Service, they are placed in an unusually favorable position to have their negatives and photographs thereof purchased for publicity purposes. Said approach and sales method are employed particularly in the case of customers who are public officials, or engage in civic or public activities. After the customer is thus induced to sit for a negative, he is then contacted by representatives of corporate respondent, and an effort is made to sell him photographs. Negatives thus obtained are later used by respondent as a basis for circularizing the customer for the purpose of selling him a "Goldtone Miniature."

Across the top of a letterhead employed by respondents, the trade name "Keystone News & Photo Service" appears in conspicuous black type. Further down on the letterhead, at the left margin thereof, in smaller upper and lower case type, appears the following:

Supplying Photographs to Newspapers, Magazines and Trade Publications, including

There follows, under the word "including," and printed in close perpendicular order, along the left margin of the letterhead, a list of nearly 60 newspapers published in various cities of the United States. Said letterhead is employed by respondents not only to impress prospective customers that are being solicited for a sitting for a photograph, but for the purpose of representing to and creating the impression generally that respondents conduct a large and complete news-gathering agency, coupled with a complete news photographic service, and have a large and influential list of patrons and customers.

PAR. 5. The aforesaid representations made by respondents herein employing the name "Keystone News & Photo Service" to obtain negatives of individuals are false, deceptive, and misleading. In truth and in fact, respondents do not own, operate, or conduct any news or press service or association, have no facilities for gathering and disseminating news, and do not do so, and have no facilities or connections which would enable them to obtain or control personal publicity, or to assist in obtaining the same. The publication and use on letterheads of respondents, or on other printed matter of the names of newspapers, magazines, or other periodicals, was done, and is being done, without the knowledge or approval of such publications. Respondents have no connection, direct or indirect, with any newspaper or publication. Respondents have no contractual arrangement with any newspapers, magazines, or other publications to obtain news, news features, or photographs for them, and while respondents from time to time may sell some photographs to some of such publications, all sales of photographs, whether to individuals, firms, or publications, are made and handled by corporate respondent, Kaiden-Kazanjan Studios, Inc., and not by Keystone News & Photo Service. Said Keystone News & Photo Service is, in fact, merely a trade name only, employed by respondents to obtain sittings for photographs, and no business is actually transacted by Keystone News & Photo Service. Respondents, in truth and in fact, do not obtain photographs for their files or for the purpose of servicing the same to newspapers or other publications, but endeavor to obtain sittings for photographs in order to sell photographs to prospective customers at exorbitant prices. Less than 5 percent of respondents' business consists of sales of photographs to newspapers, magazines, and trade papers, such sales being infrequent and sporadic.

PAR. 6. There are located in various States of the United States various corporations and associations which for many years past have operated under the laws of such States as news-gathering organiza-

tions, each with a main office, and with branch offices and correspondents distributed throughout the United States. Said organizations generally have such terms as "Press," "Press Service," "Press Association," "News Service," and "News Association," as part of their respective corporate or trade names. Said organizations perform distinct and notable public service in the gathering and dissemination of the news of the world, of the country at large, and of the communities and territories they serve, and in recording the current history thereof. Said organizations possess valuable good will and high prestige on account of the interest in and accuracy of the news gathered and disseminated by them, and are well and favorably known to the reading public. Many of said news-gathering organizations operate photographic departments and services in connection with and as an adjunct of their news-gathering and disseminating functions, which cooperate with and serve them by taking pictures of persons, scenes, and objects which are the subject of, or connected with, published news articles.

The use by corporate respondent of the trade name "Keystone News & Photo Service," printed on stationery, contract forms, in advertising, or otherwise, is a representation that respondents maintain and operate a genuine news-gathering and news-disseminating agency, enterprise, or service. In truth and in fact, respondents do not have, employ, or control any facilities either for gathering or disseminating news, and do not gather or disseminate news for publication in any daily or other newspaper, magazine, trade paper, or other publication. The use by respondents of the trade name "Keystone News & Photo Service" constitutes, within itself, a false and misleading representation that said respondents gather, disseminate, and sell news in commerce, when such is not the fact.

PAR. 7. Respondents, in the further course and conduct of their said business, have sent representatives into offices and business houses in various cities and towns of the States of the United States for the purpose of there contacting prominent business and professional men. Respondents' representative, on such occasions, again employing the name Keystone News & Photo Service, induces the prospective customer to permit his picture to be taken, "without obligation" on his part. The prospect of using the picture in a news or magazine write-up is from time to time persuasively brought to the attention of the customer. The pictures having been taken, proofs of the same are thereupon sent to the prospective customer, in an effort to sell him pictures made from the sitting.

In circular letters of general distribution, disseminated by respondents to such customers in various States of the United States, the following typical representations, among others, are made:

Complaint

Some time ago we made some very fine photographic studies of you. For the purpose of acquainting our many patrons with our new studio at the address below, we recently held an exhibition of distinctive portraits and miniatures.

We found one of your negatives admirably suited to the purpose and made a Goldtone Miniature of it for this exhibition. This exhibit is now concluded and we will shortly dismantle the miniatures used in this display.

Before doing so, we wish to offer you this handsomely framed miniature at the considerably reduced price of \$12.50. Our regular price for Goldtone Miniatures has been \$50.

In another circular, the prospective customer is advised of a currently held exhibition of unusual distinctive portraits and miniatures for the purpose of acquainting patrons with respondent's new modern studios. The customer is informed that a Goldtone Miniature to be displayed at this exhibition has been made from one of his negatives admirably suited for the purpose and the customer and his friends are cordially invited to "view the many types of unique artistry."

In the event the prospective customer ignores the first circular received by him, a follow-up circular is sent, again referring to the Goldtone Miniature made from one of the customer's negatives, and displayed at respondent's exhibition, and again offering the miniature at \$12.50. If no reply is yet received from the prospective customer, still another circular letter is transmitted, advising that the exhibition has been concluded, again offering the miniature and frame therefor at "the considerably reduced price of \$12.50," and stating that "our regular price for Goldtone Miniatures has been \$50."

PAR. 8. By the use of said representations, and others of similar import and meaning, not herein specifically set forth, the respondents represent, and have represented, that they have made an expensive miniature of the prospective customer from his negative in their possession because it was admirably suited for such purpose, that said miniature has been placed in a legitimate exhibition of photographic art, an exhibition of the kind ordinarily conducted by photographers to which the public has been invited, and largely attended; that the sum of \$12.50 is a greatly reduced price for said miniatures, and constitutes a special offer; and that the regular price at which respondents sell miniatures is \$50.

PAR. 9. The aforesaid representations are false, deceptive, and misleading. Said miniatures are not and have not been displayed at an actual legitimate exhibition of the kind ordinarily conducted by photographers to which the public was invited and which was largely attended, or at any other exhibition. No negative of the prospective customer has been selected for a miniature because it was admirably suited for such purpose. The sum of \$12.50 is not a reduced

price for said miniatures but is the price at which they are usually offered for sale by said respondents and does not constitute a reduced price or a special offer. The regular price at which said miniatures are sold is not \$50 or any sum approaching such amount, and the product represented and sold by respondents as a Goldtone Miniature is not a genuine Goldtone product as such term denotes, but a cheap imitation of the same costing at most about \$2.50 to produce.

PAR. 10. The use by respondents of the aforesaid false and misleading representations, acts, and practices in the sale and offering for sale of pictures and miniatures 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 representations are true. As a result of such erroneous and mistaken belief so engendered, a substantial number of the consuming public have been and are being induced to purchase respondents' products.

PAR. 11. The aforesaid acts, practices, and methods of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Kaiden-Kazanjan Studios, Inc., a corporation, Frances Kaiden, an individual, as president and secretary of Kaiden-Kazanjan Studios, Inc., and also trading individually, as Keystone News & Photo Service, and Aram Kazanjan, an individual, as vice president and treasurer of Kaiden-Kazanjan Studios, Inc., and trading individually, as Keystone News & Photo Service, 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, a stipulation was entered into upon the record, whereby it was stipulated and agreed by and between counsel for the Federal Trade Commission and counsel for the respondents that the statement of facts entered upon the record might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto and that said Commission might 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

¹ Original findings not published.

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 upon said complaint, answer, and stipulation, said stipulation having been approved and accepted; and the Commission, having duly considered the matter, on March 5, 1943, issued and subsequently served upon said respondents its findings as to the facts and conclusion based thereon and its order requiring the respondents to cease and desist from the practices charged in the complaint. Subsequent thereto, the respondents filed a petition or motion before the Commission to modify the findings as to the facts, conclusion based thereon, and order to cease and desist entered on March 5, 1943; and the Commission, having duly considered said petition or motion and the record herein and being now fully advised in the premises, makes this its modified findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Kaiden-Kazanjian Studios, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 21 West Forty-sixth Street, New York, N. Y. Keystone News & Photo Service, is a partnership, operating for several years last past from the same address. Respondent, Aram Kazanjian, for many years was a member of said partnership which had a working arrangement with the corporate respondent. Frances Kaiden and Aram Kazanjian, the individual respondents, are president and secretary, and vice president and treasurer, respectively, of the respondent corporation, and they, in conjunction with each other, direct and control the sales policies and practices of the corporate respondent and have directed and controlled the sales policies and practices of the Keystone News & Photo Service.

PAR. 2. Respondents are engaged in the sale and distribution of photographs and miniatures made therefrom designated as "Goldtone Miniatures." Respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs and miniatures in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents, for more than 3 years last past have been, and are now, making various false, deceptive, and misleading statements and representations concerning the purpose for which said photographs and negatives are desired and as to the quality, merits, and prices of their said miniatures. Said representations are and have been made by means of letters, circulars, and other printed and written matter distributed among customers and prospective customers, and by oral statements made to customers and prospective customers by respondents and their representatives.

PAR. 4. For the purpose of obtaining negatives from which to reproduce and sell photographs and miniatures, respondents have represented to numerous members of the purchasing public that they are conducting a news and photo service operating under the name of "Keystone News & Photo Service." Members of the purchasing public thus contacted by respondents are on occasion requested to sit for photographs by the representation that the organization desires to have pictures of them available for publicity purposes. Respondents' representatives, for use in connection with the making of such initial contacts, have been furnished with business cards reading in part.

Keystone News & Photo Service—Photographers of National Personalities

After the customer is induced to sit for a negative, he is then contacted by representatives of corporate respondent and an effort made to sell him photographs. Some of these negatives are also used to promote the sale of "Goldtone" miniatures, other types of miniatures, and various other kinds of portraiture.

Across the top of a letterhead employed by the respondents, the trade name "Keystone News & Photo Service" appears in conspicuous black type. Further down on the letterhead, at the left margin thereof, in smaller upper and lower case type, appears the following:

Supplying Photographs to Newspapers, Magazines and Trade Publications, including

There follows under the word "including" and printed in close perpendicular order along the left margin of the letterhead a list of nearly 60 newspapers published in various cities of the United States.

PAR. 5. There are located in various States of the United States various corporations and associations which for many years have operated under the laws of such States as news-gathering organizations, each with a main office and branch offices and correspondents distributed throughout the United States. Said organizations are variously known by such terms as "Press," "Press Service," "Press Association," "News Service," and "News Association." Said organ-

izations perform distinct and notable public service in the gathering and disseminating of the news of the world, of the country at large, and of the communities and territories they serve, and in recording the current history thereof. Said organizations possess valuable good will and high prestige on account of the interest in, and accuracy of, the news gathered and disseminated by them, and are well and favorably known to the reading public. Many of said news-gathering organizations operate photographic departments and services in connection with, and as an adjunct to, their news-gathering and disseminating functions, which cooperate with and serve them by taking pictures of persons, scenes, and objects which are the subject of, or connected with, published news articles.

PAR. 6. Respondents do not own, operate or conduct, and have not owned, operated, or conducted, any news or press services or association and have no facilities for gathering and disseminating news, and do not do so.

The Keystone News & Photo Service is employed by the respondents as a trade name to enable them to make original contacts with prospective purchasers. Photographic sales resulting from contacts or sittings are made by the respondent, Kaiden-Kazanjian Studios, Inc. The respondents maintain a file of negatives designated by them as a library, from which glossy print pictures are furnished to newspapers and periodicals from time to time either gratis or at special prices. The income from such glossy print business with newspapers and periodicals amounts to approximately 5 percent of the gross income of the corporate respondent. The Commission finds as a fact that the distribution of glossy prints to newspapers and periodicals is incidental only to the business of the corporate respondent, which is the sale of photographs and miniatures to the general public, and the relationship of such glossy print distribution to respondents' business is not such as will warrant any representation that respondents are engaged in the business or service of obtaining photographs to be used in conjunction with news articles or publicity items by any newspaper, magazine, or other periodical. Such representation serves only as a means of permitting and enabling salesmen to make original contacts and procure pictures of prospective purchasers upon the impression that such pictures are being obtained for publicity purposes.

The publication and use on letterheads of respondents, or on other printed matter, of the names of newspapers and magazines or other periodicals, have been made and done without obtaining the permission of said newspapers and magazines to make use of their said names. Corporate respondent has not, for at least 2 years past, used

the letterhead bearing the name of the aforesaid list of nearly 60 publications as hereinabove described.

PAR. 7. A genuine "Goldtone" print or product is a product resulting from a process involving the use of a toning bath employing salts of chloride of gold. This process produces a much warmer tone than is true in the case of black-and-white or sepia, involves more labor and detail, comprehending the toning of a print or picture a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures.

PAR. 8. Respondents, since early in the year 1940, have been selling in commerce a product described and represented by them as a "Goldtone Miniature." The product so designated is made by transposing an image or photographic likeness onto sensitized glass, backing the same with a gilded brass plate and then framing the entire structure. No chloride of gold salts are or have been used by respondents in connection with the developing, toning, or coloring of said "Goldtone Miniatures," and said products are not genuine goldtone pictures or miniatures.

PAR. 9. For the purpose of inducing the purchase of its photographic reproductions, the respondents have issued and distributed letters and circulars informing prospective purchasers that the corporate respondent has made a "Goldtone Miniature" from one of the prospective purchaser's negatives admirably suited for the purpose, which has been entered in an exhibit conducted by the corporate respondent. Further letters or circulars advise the prospective purchaser that such exhibit has been concluded and that such miniature, regularly priced at \$50, can be purchased for \$12.50.

The said exhibit or exhibition referred to by respondents in said circular letters consists of a hundred or more miniatures kept on display in respondents' waiting or anteroom. Said display is open to the public Saturday mornings, beginning in the spring, and thereafter until the hot summer months, when it is discontinued until fall, and then resumed in cooler weather.

In 1939, at 32 East Fifty-seventh Street, New York City, where corporate respondent formerly had its place of business, an exhibition of miniatures was held, to which the public at large was invited without charge, and at which approximately 1,000 different types of miniatures and portraits were displayed. A similar such exhibition was held at respondents' present place of business upon the occasion of the opening of the respondents' studios at its present address. These displays constitute the exhibition referred to in corporate respondents' said circulars. Respondents have sent out the above-described letters and circulars to many prospective purchasers residing outside

the State of New York, advising that miniatures of such persons had been in an exhibition and were about to be dismantled, when no miniatures of such persons were actually on exhibition or about to be dismantled.

While respondents are equipped to do, and can do, fine photographic work, including miniatures, and years ago did sell their said miniatures at prices ranging from \$50 to \$100, the miniatures now produced and sold by them are different, less expensive products. No miniatures referred to in said circulars, as made by them today, sell for \$50, but, instead, the regular and customary price asked and received for said products is \$12.50.

About 90 percent of all of the negatives made by them are suitable for, and can be adapted to, miniature purposes after necessary art work on the negatives has been done.

PAR. 10. The use by the respondents of the aforesaid false and misleading representations, acts, and practices in the sale and offering for sale of photographic reproductions and miniatures has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true. As a result of such erroneous and mistaken belief a substantial number of the consuming public are induced to purchase respondents' products.

CONCLUSION

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

ORDER TO CEASE AND DESIST ¹

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 upon the record between counsel for the Federal Trade Commission and counsel for the respondents, which provides among other things that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from 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 its

¹ Order, not modified, was made as of March 5, 1943. \

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

It is ordered, That respondent, Kaiden-Kazanjian Studios, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Frances Kaiden and Aram Kazanjian, individually, and as officers of Kaiden-Kazanjian Studios, 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 photographs and miniatures in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "News Service" or any other terms of similar import or meaning in any trade name or in any other manner to designate or describe any organization or business which is not engaged in the gathering and disseminating of news for newspapers, magazines, or other periodicals.

2. Representing in any manner, either directly or by implication, that the respondents are engaged in the service of gathering or disseminating news or of photographs to be used in conjunction therewith by any newspaper, magazine, or other periodical unless respondents' business consists in the rendering of such service.

3. The use of the name of any newspaper, magazine, or other periodical upon letterheads or in any other manner without the consent and permission of such magazine, newspaper, or periodical.

4. The use of the term "Goldtone" or any other term of similar import or meaning to designate or describe a photographic reproduction which is not a product resulting from a process involving the use of a toning bath employing salts of chloride of gold.

5. Representing either directly or by implication that respondents have prepared or have placed on exhibit any photograph or miniature of any purchaser or prospective purchaser unless such photograph or miniature has in fact been produced and placed on exhibit.

6. Representing as "special" or "reduced prices," prices which are in fact the regular and customary price charged by respondents for such products.

7. Representing that any photograph or miniature has a retail value or price in excess of the actual value or price at which such products are regularly and customarily offered for sale and sold in the normal and usual course of business.

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

Complaint

IN THE MATTER OF

M. L. KAY AND HUMBERT O'CAMP, ET AL, TRADING
AS LATTA CREAM

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

Docket 4925. Complaint, Mar. 4, 1943—Decision, June 16, 1943

Where two individuals engaged in interstate sale and distribution of their "Latta Cream" cosmetic, by means of advertisements including depictions in newspapers and other advertising literature, directly and by implication—

Represented falsely that the use of said product would make one look 10 to 15 years younger, that the youthful appearance of motion picture stars was brought about through use thereof, and that it would effectively remove and eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age, and would bring about a youthful and beautiful appearance;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into purchase of substantial quantities of its said product:

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

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

Mr. Frederick E. M. Ballon, of New York City, for M. L. Kay.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that M. L. Kay and Hubert O'Camp, individuals, trading as Latta Cream, 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, M. L. Kay and Hubert O'Camp, are individuals, and for some time prior to December 19, 1942, traded and did business under the firm name of Latta Cream, with their principal office and place of business located at 505 Fifth Avenue, New York City, N. Y.

PAR. 2. Said respondents were engaged in the sale and distribution of a cosmetic preparation designated as "Latta Cream." Subsequent to the aforesaid date the business has been carried on under the sole proprietorship of the respondent, M. L. Kay. Respondents caused their said product when sold to be transported from their said place

Complaint

36 F. T. C.

of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia and maintained a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated and have caused the dissemination of, false advertisements concerning their said product, Latta Cream, by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and 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 United States mails, by advertisements inserted in newspapers and other advertising literature are the following:

Look 10-15 years younger, the way the stars do. Why worry because you have wrinkles, lines, baggy eyes, double chin, sagging muscles or other age signs. Be amazed! Send \$1.00 for a full month's supply of Latta Cream.

A part of said advertisement consists of a depiction of a woman's face, one side of which shows blemishes, wrinkles, sagging muscles, and other signs of old age, the other side being youthful and beautiful in appearance and disclosing no signs of old age.

PAR. 4. Through the use of the aforesaid statements, representations and others similar thereto not specifically set out herein, and through the use of the depiction above described, respondents have represented, directly and by implication, that the use of said product will make one look 10 to 15 years younger, that the youthful appearance of motion picture stars is brought about through the use of said product; that said product will effectively remove and eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age and will bring about a youthful and beautiful appearance.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact the use of said product will not make one look 10 to 15 years younger or any number of years younger. Said product is not used by motion picture stars. It will not remove or eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age and its use will not bring about a youthful and beautiful appearance. The use by the respondents of

the depiction hereinabove referred to is deceptive and misleading in that it serves as a representation that said product will remove and eradicate skin blemishes, wrinkles, sagging muscles, and other signs of old age and will cause the face to appear youthful and beautiful.

PAR. 6. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to said product, Latta Cream, disseminated as aforesaid, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into the purchase by the public of substantial quantities of respondents' said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 4, 1943, issued and thereafter served its complaint in this proceeding upon respondents, M. L. Kay and Humbert O'Camp (named in the complaint as Hubert O'Camp), individuals, trading as Latta Cream, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 25, 1943, respondent, Humbert O'Camp, filed his answer, and on April 7, 1943, respondent, M. L. Kay, filed his answer, in which answers they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, M. L. Kay and Humbert O'Camp (named in the complaint as Hubert O'Camp), are individuals, and for some time prior to December 19, 1942, traded and did business under the firm name of Latta Cream with their principal office and place of business located at 503 Fifth Avenue, New York City, N. Y.

PAR. 2. Said respondents were engaged in the sale and distribution of a cosmetic preparation designated as "Latta Cream." Subsequent to the aforesaid date the business has been carried on under the sole proprietorship of the respondent, M. L. Kay. Respondents caused their said product, when sold, to be transported from their said place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia and maintained a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated, and have caused the dissemination of, false advertisements concerning their said product, Latta Cream, by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated, and 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 United States mails, by advertisements inserted in newspapers, and other advertising literature are the following:

Look 10-15 years younger, the way the stars do. Why worry because you have wrinkles, lines, baggy eyes, double chin, sagging muscles or other age signs. Be amazed! Send \$1.00 for a full month's supply of Latta Cream.

A part of said advertisement consists of a depiction of a woman's face, one side of which shows blemishes, wrinkles, sagging muscles, and other signs of old age, the other side being youthful and beautiful in appearance and disclosing no signs of old age.

PAR. 4. Through the use of the aforesaid statements, representations, and others similar thereto not specifically set out herein, and through the use of the depiction above described, respondents have represented, directly and by implication, that the use of said product will make one look 10 to 15 years younger; that the youthful appearance of motion-picture stars is brought about through the use of said product; that said product will effectively remove and eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age and will bring about a youthful and beautiful appearance.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact the use of said prod-

uct will not make one look 10 to 15 years younger or any number of years younger. Said product is not used by motion-picture stars. It will not remove or eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, and other signs of age and its use will not bring about a youthful and beautiful appearance. The use by the respondents of the depiction hereinabove referred to is deceptive and misleading in that it serves as a representation that said product will remove and eradicate skin blemishes, wrinkles, sagging muscles, and other signs of old age and will cause the face to appear youthful and beautiful.

PAR. 6. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to said product, Latta Cream, disseminated as aforesaid, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into the purchase by the public of substantial quantities of respondents' said product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, M. L. Kay and Humbert O'Camp (named in the complaint as Hubert O'Camp), individually, and trading as Latta Cream or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their cosmetic preparation designated "Latta Cream," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or

Order

36 F. T. C.

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 the use of said preparation will give a youthful and beautiful appearance and make one look younger; that the youthful appearance of motion picture stars is brought about through the use of said preparation; or that said preparation will effectively remove and eradicate wrinkles, lines, baggy eyes, double chin, sagging muscles, or other signs 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 in commerce as "commerce" is defined in the Federal Trade Commission Act, of said cosmetic preparation "Latta Cream," which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

Complaint

IN THE MATTER OF

DOROTHY GRAY, LTD., DOROTHY GRAY SALONS AND
LEHN & FINK PRODUCTS CORPORATION

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

Docket 3447. Complaint, May 27, 1938—Decision, June 19, 1943

Where a corporate subsidiary and its parent concern and their common officers, engaged in interstate sale and distribution of their Dorothy Gray cosmetics, in competition with many who do not misrepresent their products; by means of advertisements in magazines and newspapers and otherwise—

- (a) Falsely represented that the vitamin D in their said cream was beneficial to the skin, cleared its coloring, brightened it and softened its texture, and smoothed out lines; and
- (b) Represented that treatments therewith cleared pores of dirt and other accumulations, stimulated lagging circulation, tightened the relaxed contour of the face, and removed lines and wrinkles therefrom;

The facts being that while their creams, and emollient creams generally, have a lubricating effect in massaging and, when so used, aid in temporarily stimulating local circulation and might aid in temporarily counteracting or removing lines caused by dryness of the skin, treatment therewith would not stimulate lagging circulation, tighten relaxed facial contours, fortify against or remove lines or wrinkles; and while treatment might remove superficial accumulations of dirt in exterior openings of the pores, they would not dissolve dirt or other accumulations in the pores; and

- (c) Falsely represented that their "Special Toning Oil," either alone or in combination with their creams, made a penetrating application, and that their creams gave the skin rich lubrication, fortifying it against wrinkles;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations were true, as a result of which a number thereof purchased a substantial volume of said products:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Simon Michelet, of Washington, D. C., *Rogers, Woodson & Rogers*, of Chicago, Ill., and *Rogers, Hoge & Hills*, of New York City, for respondents.

COMPLAINT

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

Complaint

36 F. T. C.

a corporation, Dorothy Gray Salons, a corporation, and Lehn & Fink Products Corporation, a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Dorothy Gray, Ltd., is a corporation, created by and existing under the laws of the State of Delaware, with its office and principal place of business located at 683 Fifth Avenue, New York, N. Y. Dorothy Gray Salons, is a corporation, created by and existing under the laws of the State of New Jersey with its principal office and place of business located at 683 Fifth Avenue, New York, N. Y. Lehn & Fink Products Corporation, is a corporation, created by and existing under the laws of the State of New Jersey, with its office and principal place of business located in Bloomfield, N. J. Respondent, Dorothy Gray, Ltd., is a wholly owned subsidiary of Dorothy Gray Salons, which said corporation is a wholly owned subsidiary of Lehn & Fink Products Corporation. Said corporate respondents have acted together and in cooperation with each other in carrying out the acts, practices and methods hereinafter alleged.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the business of distributing and selling a line of cosmetics known as Dorothy Gray Cosmetics. Respondents cause said products when sold to be transported from their place of business in the State of New Jersey to their customers located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetics sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are in active and substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said cosmetics, respondents have made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, many representations concerning the character and nature of said cosmetics and concerning results obtained from their use. Among said representations made by respondents are the following:

Now the Dorothy Gray Salons crown years of achievement with an exciting new development. Their emollient creams so faithful in combating age have been enriched with vitamin D. This is the vitamin that skin absorbs. As scientific evidence indicates, it is directly beneficial. Coloring clears, brightens. Skin texture feels softer. Lines seem to smooth out noticeably.

Today there is no need for sluggish circulation to cause wrinkles, drooping flabby cheeks and chins. The Dorothy Gray Treatment Method briskly stimulates lagging circulation and tightens the relaxed contour.

If your skin looks sluggish let it revel in our Masque Frappe. This very successful Dorothy Gray Treatment sparkles up circulation—clears your pores of any shadowy accumulations.

Lines took me by surprise. So aging! But these Dorothy Gray Alimenteau Treatments tackle every line and wrinkle that come my way.

Special Toning Oil: To counteract lines and wrinkles. A rich oil that may be patted on directly or combined with Special Dry Skin Cream or extra rich cream to make a richer and more penetrating application.

Special Dry Skin Mixture: The softening and lubricating cream, the night cream, for dry skins. Gives the skin rich lubrication, fortifying it against wrinkles.

All of said statements together with similar statements appearing in the respondents' advertising literature purport to be descriptive of respondents' products and of their effectiveness in use. In all of their advertising literature and through other means respondents directly or by inference through statements and representations herein set out and other statements of similar import and effect, represent that the vitamin D contained in their products is directly beneficial to the skin, that it clears the coloring of the skin and brightens the skin, that their creams containing this vitamin make skin texture softer, and smooth lines out of the skin, that their creams clear skin pores of dirt and other accumulations, that their creams stimulate lagging circulation and tighten the relaxed contour of the face, that treatments with their creams remove lines and wrinkles from the face, that their Special Toning Oil combined with other of their creams makes a penetrating application and that their creams give the skin rich lubrication, fortifying it against wrinkles.

PAR. 5. Representations made by respondents with respect to the nature and effect of their products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact their creams containing vitamin D are not directly beneficial to the skin. Vitamins contained in their creams do not clear or brighten the skin, nor do these creams make the texture of the skin softer or smooth out lines. Respondents' creams do not clear the pores of the skin of dirt and other accumulations. Dorothy Gray Treatments do not stimulate lagging circulation, nor tighten relaxed contour of the face. Respondents' creams do not attack every line and wrinkle of the face. Respondents' Special Toning Cream does not penetrate the skin nor

do respondents' creams provide the skin with rich lubrication fortifying it against wrinkles.

The true facts are that the ingredients of Dorothy Gray Cosmetics other than vitamins are not absorbed by or through the skin, nor do they penetrate the skin. It is possible that some types of vitamins may be absorbed through the skin. However, if vitamins are absorbed through the skin they will not beneficially effect the local condition of the skin where applied. Any vitamin deficiency can be more scientifically treated by way of diet and by the introduction of vitamins and vitamin concentrates by way of the mouth. Respondents' creams' only value consists in the fact that they provide a pleasant lubricant for massaging the face, which massage may be directly beneficial to the skin.

PAR. 6. There are among respondents' competitors many who manufacture, distribute, and sell cosmetics who do not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating or describing their products, and their effectiveness when used, as hereinabove set out, was and is calculated to, and has had and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' products, with the result that trade has been diverted unfairly to respondents from competitors likewise engaged in the business of distributing and selling cosmetics, and who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done, and is now being done, by 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 the respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 27th day of May, A. D. 1938, issued and subsequently served it complaint in this proceeding upon the respondents, Dorothy Gray, Ltd., a corporation; Dorothy Gray Salons, a corporation; and Lehn & Fink Products Corporation, *

corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 7, 1938, the respondents filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents' counsel, Rogers, Hoge & Hills, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Counsel for the respondents expressly waived filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Dorothy Gray, Ltd., is a corporation, created by and existing under the laws of the State of Delaware, with its office and principal place of business located at 192 Bloomfield Avenue, Bloomfield, N. J. Dorothy Gray Salons was until April 1, 1941, when it was liquidated and dissolved, a corporation, created by and existing under the laws of the State of New Jersey with its principal office and place of business located at 192 Bloomfield Avenue, Bloomfield, N. J. Lehn & Fink Products Corporation, is a corporation, created by and existing under the laws of the State of Delaware with its office and principal place of business located in Bloomfield, N. J. Respondent, of Dorothy Gray, Ltd., was until April 1, 1941, a wholly-owned subsidiary of Dorothy Gray Salons, a corporation, and since that time has been a wholly owned subsidiary of Lehn & Fink Products Corporation, and Dorothy Gray Salons was until its dissolution a wholly owned subsidiary of respondent, Lehn & Fink Products Corporation. Said corporate respondents, each of whose principal officers are the same individuals, have acted together and in cooperation with each other in carrying out the acts, practices, and methods hereinafter described.

PAR. 2. Respondent, Dorothy Gray, Ltd., is now, and for more than 6 years last past has been, engaged in the business of distributing and selling a line of cosmetics known as Dorothy Gray Cosmetics. Said respondent causes said products, when sold, to be transported from its place of business in the State of New Jersey to its customers located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetics sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are in active and substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said cosmetics, respondents have made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers circulated generally throughout the United States, many representations concerning the character and nature of said cosmetics and concerning results obtained from their use. Among the representations made by respondents at various times prior to May 27, 1938, are the following:

Now the Dorothy Gray Salons crown years of achievement with an exciting new development. Their emollient creams so faithful in combating age have been enriched with vitamin D. This is the vitamin that skin absorbs. As scientific evidence indicates, it is truly beneficial. Coloring clears, brightens. Skin texture feels softer. Lines seem to smooth out noticeably.

Today there is no need for sluggish circulation to cause wrinkles, drooping flabby cheeks and chins. The Dorothy Gray Treatment Method briskly stimulates lagging circulation and tightens the relaxed contour.

If your skin looks sluggish let it revel in our Masque Frappe. This very successful Dorothy Gray Treatment sparkles up circulation—clears your pores of any shadowy accumulations.

Lines took me by surprise. So aging! But these Dorothy Gray Alimenteau Treatments tackle every line and wrinkle that come my way.

Special Toning Oil: To counteract lines and wrinkles. A rich oil that may be patted on directly or combined with Special Dry Skin Cream or extra rich cream to make a richer and more penetrating application.

Special Dry Skin Mixture: The softening and lubricating cream, the night cream, for dry skins. Gives the skin rich lubrication, fortifying it against wrinkles.

All of said statements, together with similar statements appearing in the respondents' advertising literature, purport to be descriptive of respondents' products and of their effectiveness in use. In all of their advertising literature and through other means, respondents have represented at various times in the past through the statements and representations herein set out and other statements of similar import and effect, that the vitamin D contained in their cosmetic creams was beneficial to the skin; that it cleared the coloring of, and brightened, the skin, and made the skin texture softer and smoothed lines out of the skin; that the treatments in which respondents' creams were used cleared skin pores of dirt and other accumulations; that treatments with their said creams stimulated lagging circulation, tightened the relaxed contour of the face, and removed lines and wrinkles from the face; that their Special Toning Oil, combined with other of their creams, made a penetrating application, and that their creams gave the skin rich lubrication, fortifying it against wrinkles.

PAR. 5. The aforesaid representations made by the respondents with respect to the nature and effect, when used, of their cosmetic products were exaggerated and misleading. In truth and in fact, the vitamin D contained in respondents' cosmetic creams would not cause the coloring of the skin to be cleared or brightened to any extent; would not make skin texture softer, nor smooth lines out of the skin, or have any beneficial effects whatsoever upon or to the skin.

While Dorothy Gray creams and emollient creams generally would have a lubricating effect when used in massaging the skin and while such creams, under such conditions of use, would aid in temporarily stimulating local circulation, treatments with respondents' Dorothy Gray creams would not stimulate lagging circulation and would not tighten the relaxed contours of the face nor fortify against, counteract, or remove lines or wrinkles in the skin. In some instances lines in the face may be caused by dryness of the skin, and Dorothy Gray creams and oils and emollient creams and oils generally which lubricate the skin and tend to counteract such dryness may aid in temporarily counteracting or removing such lines.

While the treatments in which respondents' creams are used may remove superficial accumulations of dirt in the exterior openings of the pores, such creams would not dissolve dirt or other accumulations in the pores of the skin or clear or cleanse the pores of such dirt or other accumulations.

Many skin creams, including respondents' creams, clean the surface of the skin, including the exterior openings of the pores, and respondents' creams in their method of cleaning are no different in this general

Order

38 F. T. C.

respect from such other preparations. Respondents' Special Toning Oil, when used either alone or in combination with respondents' creams, does not counteract wrinkles and does not penetrate the skin.

PAR. 6. There are among respondents' competitors many who manufactured, distributed and sold cosmetics who did not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the misleading statements and representations made by the respondents in designating or describing their products, and their effectiveness when used, as hereinabove set out, has had a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondents, Dorothy Gray, Ltd., a corporation, and Lehn & Fink Products Corporation, a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of their cosmetic preparations or any products of substantially similar composition, or possessing substantially similar properties, do forthwith cease and desist from representing:

911

Order

1. That the vitamin D contained in respondents' cosmetic creams will cause the coloring of the skin to be cleared or brightened, will make skin texture softer, will smooth lines out of the skin or will provide any beneficial effect whatsoever to the skin.

2. That treatments with respondents' cosmetic preparations tighten the relaxed contour of the face or stimulate lagging circulation or have any effect upon circulation in excess of temporarily stimulating local circulation.

3. That treatments with respondents' cosmetic preparations will clear the pores of dirt and other accumulations: *Provided, however,* That the respondents are not hereby prohibited from representing that such creams may remove superficial accumulations of dirt from the pore openings. .

4. That respondents' cosmetic preparations will remove, counteract, or fortify against lines or wrinkles in the skin: *Provided, however,* Respondents are not prohibited hereby from representing that an emollient cream which lubricates the skin will aid in smoothing out lines caused solely by dryness of the skin.

5. That respondents' Special Toning Oil, used alone or in combination with their creams will penetrate the skin.

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

It is further ordered, That the case growing out of the complaint issued herein be closed, without prejudice, insofar as the respondent, Dorothy Gray Salons, a corporation, is concerned for the reason that said respondent corporation was liquidated and dissolved April 1, 1941.

IN THE MATTER OF

MAX E. HEYMAN AND MAUDE S. JARET, TRADING AS
DOMESTIC DIATHERMY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4942. Complaint, Apr. 12, 1943—Decision, June 19, 1943*

Where two individuals engaged in interstate sale and distribution of their "Domestic Short-Wave Diathermy" device; by means of advertisements in newspapers, radio and other advertising literature—

- (a) Represented that their said device when used by the unskilled lay public in the home treatment of self-diagnosed diseases and ailments, provided a scientific, safe, harmless, and effective treatment of, and a competent remedy for, rheumatism, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsillitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women, and for the alleviation of pain resulting therefrom; and
- (b) Represented that through use thereof one might renew youthful vigor, establish body efficiency and resistance to disease, and restore both body and spirit; and that the treatment was similar to that known as "friendly fever" and produced comparable results;

The facts being that said representations were grossly exaggerated, false and misleading; use of said device as recommended might result in serious and irreparable injury to health in conditions involving acute inflammatory processes, or involving the special senses and glandular structures; use thereof for relieving pains which might be symptomatic of deeper and serious underlying diseases or causes, might fatally delay proper diagnosis and treatment; under certain circumstances, might stimulate growth of cancer cells or cause their spread to other tissues; in others, might increase congestion or result in severe burns and destruction of tissues; and question as to when diathermy is contra-indicated, and the method and duration of use to alleviate rather than aggravate the condition, requires competent medical diagnosis of the ailment and its underlying cause; and

- (c) Failed to reveal facts material in the light of such misrepresentations: that prescribed use of said device might result in serious and irreparable injury to health, and that it might be safely used only after determination by competent medical authority that diathermy was indicated, and prescription thereby of frequency and amount of application of the treatments, and adequate instruction of the user by a trained technician in operation of the device;

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

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

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

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Max E. Heyman and Maude S. Jaret, individuals, and trading as Domestic Diathermy 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, Max E. Heyman and Maude S. Jaret, are individuals, trading as Domestic Diathermy Co., with their office and principal place of business located at 251 West Fifty-seventh Street, New York, N. Y.

PAR. 2. 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 Domestic Short-Wave Diathermy. In the course and conduct of their business respondents cause and have caused said device or apparatus, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their points of location in other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said device or apparatus in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said product by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; 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

Complaint

36 F. T. C.

by the United States mails, by advertisements in newspapers, by radio continuities, and other advertising literature are the following:

If you are suffering from any form of rheumatism such as arthritis, sciatica, neuralgia, lumbago, sinus or neuritis, learn how you may obtain relief from the pain caused by these ailments.

Short-Wave Diathermy, the scientific development that goes deep down into the tissues of the body to stimulate circulation and drive away the cause of the pain.

Here's a way to bring freedom from these crippling ailments—the Short-Wave Diathermy.

RELIEF FOR ARTHRITIS. Short-Wave Diathermy easily and simply applied by yourself in your own home helps the crippling pain of rheumatism, sciatica, neuritis, lumbago and sinus.

Rheumatism, arthritis, sciatica, neuritis, lumbago, asthma,—Science has found a proven remedy for relieving these victims, a remedy so simple and effective as to seem a miracle.

Heat—not the superficial heat of bands, poultices, electric pads and sunlamps—but soothing, gentle, healing heat which travels deep down into and through pain wracked bones, aching muscles and throbbing nerves.

A heat that not only relieves pain but fights off disease by reestablishing the body's efficiency and summing up bodily resistance.

The portable Short-Wave Diathermy machine perfected by the Domestic Diathermy Company, the organization with the most mature experience in this field, is designed to achieve for the patient in his own home the practical results he looks for from the larger, professional heat machines. * * * Now in the privacy of your own home, as frequently as you feel the need, you can call to your aid science's new health miracle and restore both body and spirit by the simple act of plugging your Domestic portable machine into the regular current socket.

Friendly Fever Domestic Short-Wave diathermy is simply and easily applied. Avoid that painful trip to the hospital or doctor's office. Spare yourself the inconvenience and expense of such trips without sacrificing their benefits.

Its simple and entirely safe operation.

Scientific Heat that heals

Blessed relief for rheumatism, arthritis, neuritis, sciatica, lumbago, laryngitis, tonsillitis, bursitis, muscular ailments, sinus conditions, common colds, neuralgia, bronchial asthma, traumatic injuries.

BRONCHIAL ASTHMA and BRONCHITIS. Beneficial results in these conditions have been well-established. Medical authorities report that respiration becomes freer and easier from the beginning of the treatment, and clinical records show that success was obtained in over 75% of the cases.

COMMON COLDS. The use of Short-Wave Diathermy at the first sign of a cold is often effective in breaking it up before it becomes serious, thus avoiding possible complications such as pneumonia, etc.

SINUS INFECTION. The alleviation and relief to sinus sufferers by Short-Wave Diathermy is truly amazing. Medical science is fast recognizing the superiority of this method.

FOR WOMEN. In the ailments common to women Short-Wave Diathermy has proved to be a veritable blessing for relieving much pain and suffering.

Arthritis, sciatica, neuralgia, lumbago, sinus or neuritis are all unnecessary if you will investigate the possible benefits of Domestic Short-Wave Diathermy. Do as thousands have already. You can again feel that inner warmth that is always present with intoxicating good health. Domestic Short-Wave Diathermy, now an important addition to the requirements of every hospital, is the means by which you can achieve healthful vigor. Its deep and invigorating warmth penetrates to every organ, stimulating circulation and thus aiding the blood.

PAR. 4. By the use of representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that its device or apparatus advertised as Domestic 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, and constitutes a competent remedy for rheumatism in its various forms in all parts of the body, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsilitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries and ailments common to women, and for the alleviation of pain resulting therefrom, and through its use one may renew youthful vigor, establish body efficiency and resistance to disease, and restore both body and spirit; that the treatment provided thereby is similar to that known as "friendly fever" and the results are comparable to those obtained through the use of such treatment, and that the use of said device will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. Respondents' device or apparatus is composed principally of a transformer, short-wave generator, two radio tubes and two coils housed in a portable cabinet. The device operates upon approximately a 12-meter wave length. 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 or pad. The application to the patient is usually made 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 is not an effective method for the treatment of, nor does its use constitute a competent remedy for, rheumatism in its various forms in all parts of the body, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsilitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women. The use

of said device will not renew youthful vigor nor will it establish body efficiency and resistance to disease or provide good health and restore both body and spirit. The treatment provided by said device is not similar to that known as "friendly fever" and the results are not comparable to those obtained through the use of such treatment.

Said device 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. Its use is contraindicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

In 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, its use 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 contraindicated. 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 to induce 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 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 12, 1943, issued and thereafter served its complaint in this proceeding upon respondents, Max E. Heyman and Maude S. Jaret, individuals, and trading as Domestic Diathermy Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 8, 1943, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Max E. Heyman and Maude S. Jaret, are individuals, trading as Domestic Diathermy Co. with their office and principal place of business located at 251 West Fifty-seventh Street, New York, N. Y.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of a certain device designated as Domestic Short-Wave Diathermy. In the course and conduct of their business respondents cause and have caused said device when sold to be transported from their place of business in the State of New York to purchasers thereof at their points of location in other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said 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 var-

ious other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

If you are suffering from any form of rheumatism such as arthritis, sciatica, neuralgia, lumbago, sinus or neuritis, learn how you may obtain relief from the pain caused by these ailments.

Short-Wave Diathermy, the scientific development that goes deep down into the tissues of the body to stimulate circulation and drive away the cause of the pain.

Here's a way to bring freedom from these crippling ailments—Short-Wave Diathermy.

RELIEF FOR ARTHRITIS. Short-Wave Diathermy easily and simply applied by yourself in your own home helps the crippling pain of rheumatism, sciatica, neuritis, lumbago and sinus.

Rheumatism, arthritis, sciatica, neuritis, lumbago, asthma,—Science has found a proven remedy for relieving these victims, a remedy so simple and effective as to seem a miracle.

Heat—not the superficial heat of bands, poultices, electric pads and sunlamps—but soothing, gentle, healing heat which travels deep down into and through pain wracked bones, aching muscles and throbbing nerves.

A heat that not only relieves pain but fights off disease by reestablishing the body's efficiency and summing up bodily resistance.

The portable Short-Wave Diathermy machine perfected by the Domestic Diathermy Company, the organization with the most mature experience in this field, is designed to achieve for the patient in his own home the practical results he looks for from the larger, professional heat machines. * * * Now in the privacy of your own home, as frequently as you feel the need, you can call to your aid science's new health miracle and restore both body and spirit by the simple act of plugging your Domestic portable machine into the regular current socket.

Friendly Fever Domestic Short Wave diathermy is simply and easily applied. Avoid that painful trip to the hospital or doctor's office. Spare yourself the inconvenience and expense of such trips without sacrificing their benefits.

Its simple and entirely safe operation.

Scientific Heat that heals.

Blessed relief for rheumatism, arthritis, neuritis, sciatica, lumbago, laryngitis, tonsillitis, bursitis, muscular ailments, sinus conditions, common colds, neuralgia, bronchial asthma, traumatic injuries.

Findings

36 F. T. C.

BRONCHIAL ASTHMA and BRONCHITIS. Beneficial results in these conditions have been well-established. Medical authorities report that respiration becomes freer and easier from the beginning of the treatment, and clinical records show that success was obtained in over 75% of the cases.

COMMON COLDS. The use of Short-Wave Diathermy at the first sign of a cold is often effective in breaking it up before it becomes serious, thus avoiding possible complications such as pneumonia, etc.

SINUS INFECTION. The alleviation and relief to sinus sufferers by Short-Wave Diathermy is truly amazing. Medical science is fast recognizing the superiority of this method.

FOR WOMEN. In the ailments common to women Short-Wave Diathermy has proved to be a veritable blessing for relieving much pain and suffering.

Arthritis, sciatica, neuralgia, lumbago, sinus or neuritis are all unnecessary if you will investigate the possible benefits of Domestic Short-Wave Diathermy. Do as thousands have already. You can again feel that inner warmth that is always present with intoxicating good health. Domestic Short-Wave Diathermy, now an important addition to the requirements of every hospital is the means by which you can achieve healthful vigor. Its deep and invigorating warmth penetrates to every organ, stimulating circulation and thus aiding the blood.

PAR. 4. By the use of representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that its device advertised as Domestic 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 and constitutes a competent remedy for rheumatism in its various forms in all parts of the body, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsillitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women, and for the alleviation of pain resulting therefrom, and through its use one may renew youthful vigor, establish body efficiency and resistance to disease, and restore both body and spirit; that the treatment provided thereby is similar to that known as "friendly fever" and the results are comparable to those obtained through the use of such treatment, and that the use of said device will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. Respondents' device is composed principally of a transformer, short-wave generator, two radio tubes and two coils housed in a portable cabinet. The device operates upon approximately a 12-meter wave length. 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 or pad. The application to the patient is usually made 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 is not an effective method for the treatment of, nor does its use constitute a competent remedy for, rheumatism in its various forms in all parts of the body, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsillitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women. The use of said device will not renew youthful vigor nor will it establish body efficiency and resistance to disease or provide good health and restore both body and spirit. The treatment provided by said device is not similar to that known as "friendly fever" and the results are not comparable to those obtained through the use of such treatment.

Said device 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. Its use is contraindicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

In 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, its use 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.

Findings

36 F. T. C.

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 contraindicated. 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 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 disseminated as aforesaid has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondent's said device.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Max E. Heyman and Maude S. Jaret, individuals, jointly or severally, trading as Domestic Diathermy Co., or trading under any other name, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' device designated as "Domestic 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 advertisement, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That said device is safe or harmless.

(b) That said device, when used by unskilled laymen in the treatment of self-diagnosed conditions, constitutes a competent or effective treatment of or remedy for rheumatism, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsilitis, bursitis, mus-

cular ailments, common colds, asthma, traumatic injuries, or ailments common to women.

(c) That said device constitutes a competent or effective treatment for the alleviation of pain resulting from diseases and ailments of the human body unless specifically limited to conditions which do not involve acute inflammatory processes, glandular structures, or the special senses.

(d) That the use of said device will renew youthful vigor, establish body efficiency and resistance to disease, or restore body or spirit.

(e) That the treatment provided by said device is similar to that known as "friendly fever" or that the results of its use are comparable to those obtained through the use of "friendly fever."

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 said device is not safe for use for any condition 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 paragraph 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.

Complaint

IN THE MATTER OF
KOLA ASTIER CORPORATION AND GALLIA
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 4682. Complaint, Jan. 26, 1942—Decision, June 24, 1943

Where two corporations under common ownership and with identical addresses and officers, engaged in interstate sale and distribution of their "Kola Astier" medicinal preparation; by means of advertisements disseminated through the mails and otherwise, directly and by implication—

Represented that their said product had therapeutic value in the treatment of disorders and conditions which resulted from exhausted nerves, and constituted an effective treatment for poor digestion and insomnia; was a tonic which would strengthen, sustain, and promote abundant nerve force; acted directly on the nerve centers, and sped up the functions of every organ; strengthened heart action, increased blood circulation, activated liver and kidneys, and improved digestion; and that use thereof would restore nerve force and lost strength;

The facts being that in the recommended dosage of said product, the amount of caffeine—the only active ingredient—was approximately the same as that contained in a weak cup of coffee; the value of the preparation was limited to that of a temporary stimulant, and only to the extent of the stimulating effect obtained from a cup of coffee; it had no therapeutic value in the treatment of any disorder or condition resulting from exhausted nerves, other than that afforded by a mild, temporary stimulant; any beneficial effect upon poor digestion was negligible, and it might have a tendency to increase insomnia; the amount of caffeine in the recommended dosage would have a negligible effect upon heart action or circulation; and the diuretic action of both the caffeine and theobromine was negligible and would have no effect in activating the liver and kidneys;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that said preparation was of therapeutic value, thereby causing purchase thereof because of such mistaken belief:

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

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

Mr. R. P. Bellinger for the Commission.

Mr. Walter L. Post, 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 Kola Astier Corpora-

Complaint

36 F. T. C.

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

PARAGRAPH 1. Respondents, Kola Astier Corporation and Gallia Laboratories, Inc., are corporations, organized, existing and doing business under and by virtue of the laws of the State of New York, each with its principal place of business located at 254-256 West Thirty-first Street, New York, N. Y.

PAR. 2. Respondents are now and for several years last past have been engaged in the offering for sale, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of a medicinal preparation designated as Kola Astier.

Respondents cause said preparation, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated by respondents, as aforesaid, are the following:

Exhausted Nerves Cause of Many Ills

Do sudden noises make you jump * * * the radio set you on edge? Are you irritable, impatient * * * snappy with your family? Do you easily get the "blues"? Digestion poor? Spend restless nights?

Exhausted nerves probably explains it all. For remember, it is our nerves that govern and control everything that goes on within us—every activity of brain and body. When sufficient nerve-force is lacking, the entire human machinery slows down—none of our organs function properly. Restore nerve-force and improvement immediately takes place.

KOLA ASTIER will help you. This wonderful preparation developed by Dr. P. Astier of Paris is what leading European doctors themselves take when they get tired out and nervous and want quick new strength. It is a sustaining tonic that never lets you down—that leaves no depressing after-effect. It tones, strengthens, sustains, promotes abundant nerve-force. So highly does the medical profession look upon *Kola Astier* that since 1928 alone over 10,000,000 bottles have been used, mostly as a result of doctors' prescriptions.

Start taking Kola Astier today and see how quickly calm nerves, poise, cheerfulness, mental keenness, and physical vigor, pep and endurance return.

VIGOR, VITALITY, STAMINA, THROUGH NEW NERVE FORCE

Your nerves control every function of your body and brain. When your nerves have weakened, your stomach, liver, kidneys, bowels, cease functioning properly, robbing you of body strength and mental vigor. You lack "pep," your mind becomes sluggish, you are easily depressed.

Kola Astier, wonderful, stimulant-tonic developed by Dr. P. Astier of Paris, contains ingredients that act directly on the nerve centers and promote new nerve force which speeds up the functions of every organ. Your heart action is strengthened, blood circulation increased, liver and kidneys activated, digestion improved. Mental sluggishness disappears. Vim, vigor, cheerfulness, soon return.

"Kola Astier restores lost strength," writes one doctor. Another doctor writes, "I have obtained most satisfactory results with Kola Astier in cases of physical and mental over-strain, nervous exhaustion and general rundown conditions."

Get rid of that tired-out feeling. Gain vigor, pep. You can quickly regain lost vigor and pep with KOLA ASTIER * * * The powerful yet harmless vitalizer.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' said preparation, respondents have represented and do now represent, directly and by implication, that their medicinal preparation designated as Kola Astier is a competent and effective remedy for insomnia, restlessness, and exhausted or weakened nerves; that it is an effective tonic which leaves no depressing after-effects; that it tones, strengthens, sustains, and promotes new or abundant nerve force; that it restores calm nerves, poise, cheerfulness, mental keenness, physical vigor, pep, and endurance; that it acts directly on the nerve centers, strengthens heart action, increases blood circulation, activates

liver and kidneys, improves digestion; that it restores lost strength, relieves physical and mental overstrain, nervous exhaustion, and general run-down condition.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false, and misleading. In truth and in fact said preparation is not a competent and effective remedy for insomnia, restlessness, and exhausted or weakened nerves. It is not an effective tonic which leaves no depressing after-effects. It does not tone, strengthen, sustain, and promote new or abundant nerve force. It does not restore calm nerves, poise, cheerfulness, mental keenness, physical vigor, pep, and endurance. It does not act directly on the nerve centers, does not strengthen heart action, does not increase blood circulation, does not activate liver and kidneys, and does not improve digestion. It does not restore lost strength, relieve physical and mental overstrain, nervous exhaustion, or overcome a general run-down condition. Furthermore, said preparation is of no therapeutic value in the treatment of any disease or condition of the body in excess of its effect as a temporary stimulant and a mild diuretic.

PAR. 6. The use by respondents of the foregoing false, deceptive, misleading, and exaggerated, statements and representations with respect to respondents' said preparation has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of substantial quantities of respondents' said preparation because of said erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 26, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Kola Astier Corporation, a corporation, and Gallia Laboratories, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers 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, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Kola Astier Corporation and Gallia Laboratories, Inc., are corporations, organized, existing, and doing business under and by virtue of the laws of the State of New York, each with its principal place of business located at 254-256 West Thirty-first Street, New York, N. Y.

PAR. 2. During the times hereinafter mentioned and in the manner hereinafter described the respondents have been engaged in the offering for sale, sale, and distribution of a medicinal preparation designated as "Kola Astier" in commerce among and between the various States of the United States. Respondents have caused said preparation when sold to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States.

PAR. 3. Respondent, Gallia Laboratories, Inc., was organized in 1926. From the date of its organization until about 1936 said respondent was engaged in the sale and distribution of the medicinal preparation Kola Astier to the medical profession. In 1936, the respondent, Kola Astier Corporation, was formed to use the name "Kola Astier" in advertising to the general public. From the date of its organization until about the year 1941, the respondent, Kola Astier Corporation, was engaged in the manufacture of the medicinal preparation Kola Astier, the entire output of which was sold to the respondent, Gallia Laboratories, Inc., for distribution to the purchasers thereof. In 1941 the respondent, Kola Astier Corporation, discontinued business but was never dissolved as a corporation and still continues in existence. Since the discontinuance of active business by the Kola Astier Corporation, the respondent, Gallia Laboratories, Inc., has been engaged

in the manufacture, as well as the sale and distribution, of said medicinal preparation. Since 1936 said preparation has been sold to wholesale druggists, chain stores, and a few professional men.

The respondents, Kola Astier Corporation and Gallia Laboratories, Inc., are both wholly owned by Dr. P. Astier, with the exception of two qualifying shares. The place of business of each of said respondents was located at the same address and the officers of said respondent corporations were identical. In 1939 Dr. P. Astier was president; Albert Thouin, vice president; Edward Lassere, second vice president; and Henry Dalby, secretary-treasurer, of both of said corporations. In February 1942, for the purpose of qualifying to obtain an alcohol permit, Edward Lassere, became president and treasurer of Gallia Laboratories, Inc. This was necessary because the ownership of the stock of said respondent corporation was held by Dr. P. Astier, who resided in Paris, France. There was, however, no change in the ownership of the capital stock of either of said respondent corporations.

The Commission finds that the respondent corporations, acting by and through identical officers, acted in conjunction and cooperation with each other in performing the acts and practices hereinafter described.

PAR. 4. 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 false advertisements disseminated and caused to be disseminated by respondents as aforesaid, are the following:

Kola Astier, wonderful stimulant-tonic developed by Dr. P. Astier of Paris, contains ingredients that act directly on the nerve centers and promote new nerve force which speeds up the functions of every organ. Your heart action is strengthened, blood circulation increased, liver and kidneys activated, digestion improved. Mental sluggishness disappears. Vim, vigor, cheerfulness, soon return.

"Kola Astier restores lost strength," writes one doctor. Another doctor writes, "I have obtained most satisfactory results with Kola Astier in cases of physical and mental overstrain, nervous exhaustion and general rundown conditions."

Exhausted Nerves Cause of Many Ills

Do sudden noises make you jump * * * the radio set you on edge? Are you irritable, impatient * * * snappy with your family? Do you easily get the "blues"? Digestion poor? Spend restless nights?

KOLA ASTIER will help you. This wonderful preparation developed by Dr. P. Astier of Paris, is what leading European doctors themselves take when they get tired out and nervous and want quick new strength. It is a sustaining tonic that never lets you down—that leaves no depressing after-effect. It tones, strengthens, sustains, promotes abundant nerve-force.

You can quickly regain lost vigor and pep with KOLA ASTIER * * * the powerful, yet harmless vitalizer—the bracing tonic many doctors take themselves whenever they get exhausted and want quick, new strength.

PAR. 5. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' said preparation, respondents have represented directly and by implication that their medicinal preparation, Kola Astier, has therapeutic value in the treatment of disorders and conditions resulting from exhausted nerves and constitutes a competent and effective treatment for poor digestion and insomnia; that said preparation is a tonic which will strengthen, sustain, and promote abundant nerve force; that said preparation acts directly on the nerve centers, promotes new nerve force, and speeds up the functions of every organ; that said preparation will strengthen heart action, increase blood circulation, activate liver and kidneys, and improve digestion; and that its use will restore nerve force and restore lost strength.

PAR. 6. Respondents' preparation contains the extract of the kola nut in the proportion of 653 grams of extract of kola nut to 10 kilos of sugar. The dosage recommended by the respondents is 2 teaspoonfuls a day—1 teaspoonful 1 hour before the noonday meal and one about 1 hour before the evening meal. Based upon an analysis of this preparation, it contains 10.084 percent of caffeine and 0.03 percent of theobromine. Caffeine is the only active ingredient in respondents' preparation as 0.03 percent of theobromine is too small to have any appreciable effect, and, in the dosage recommended, the action of the theobromine would be negligible. The caffeine contained in respondents' preparation in the dosage recommended is approximately the same as the amount of caffeine contained in a weak cup of coffee. The value of said preparation is limited to that of a temporary stimulant and only to the extent of the stimulating effect obtained from a cup of coffee. This preparation has no therapeutic value in the treatment of any disorder or condition resulting from exhausted nerves

Order

38 F. T. C.

other than that afforded by a mild, temporary stimulant. It has no value as a tonic and cannot restore lost energy or lost strength and will not strengthen, sustain, or promote nerve force. The effect of this preparation is limited to the temporary stimulation of stored energy. The beneficial effect obtainable from the use of respondents' preparation upon poor digestion is negligible and might have a tendency to increase insomnia. The amount of caffeine introduced into the system through the use of respondents' preparation in the dosage recommended would have negligible effect upon the heart action or circulation. The diuretic action of both the caffeine and theobromine in said preparation is negligible and will have no effect in activating the liver and kidneys.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to said preparation, Kola Astier, has had and now has the capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' preparations may be relied upon as an effective stimulant for exhausted nerves, heart, and circulatory system, and that it will restore lost energy and nerve force and have therapeutic value in relieving gastrointestinal disturbances and other conditions attributed to, or associated with, nervous conditions, and causes such members of the purchasing public to purchase substantial quantities of respondents' preparation because of such erroneous and mistaken beliefs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony, and other evidence in support of, and in opposition to, the allegations of said 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 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 the respondents, Kola Astier Corporation, a corporation, and Gallia Laboratories, Inc., a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their medicinal preparation designated "Kola Astier," 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 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 through inference,

a. That respondents' preparation has any therapeutic value in the treatment of any disorder or condition resulting from exhausted nerves other than that afforded by a mild, temporary stimulant.

b. That respondents' preparation is a tonic or that its use will restore lost energy or lost strength, or that it will sustain or promote nerve force.

c. That respondents' preparation constitutes a competent or effective treatment for poor digestion or insomnia.

d. That respondents' preparation has any reliable therapeutic value or beneficial effect upon heart action or the circulatory system.

e. That the diuretic action of respondents' preparation is sufficient to have therapeutic value in activating the liver and kidneys.

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' medicinal preparation, Kola Astier, 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.

IN THE MATTER OF
FREEDOM CHEMICAL COMPANY, INC.

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

Docket 4905. Complaint, Feb. 10, 1943—Decision, June 24, 1943

Where a corporation, engaged in interstate sale and distribution to jobbers, for resale to garages and service stations, of its "GO Below" antifreeze solution for automobile radiators, by means of advertisements in trade journals, folders, circular letters, streamers, and other advertising material, directly and by implication—

- (a) Represented falsely that its said product was a perfect permanent antifreeze for use in automobile and truck radiators, which contained a chemical called calcium bichlorinate, and which would not become gelatinous, gum up, crawl or seep, or cause any corrosive damage to automotive metals; that it was less corrosive thereto than ordinary tap water, and compared favorably in that respect with any known premium quality antifreeze sold in the United States; and that it was in a superior class from antifreeze solutions which had proven ruinous and costly in use;

The facts being that there is no such chemical as calcium bichlorinate, and product in question, which had a calcium chloride base, was inferior to antifreeze solutions with glycerin or alcoholic bases; caused seepage; was highly corrosive to automotive metals such as iron, steel, bronze, solder, copper, brass, and aluminum, and more so than tap water; and its other claims, noted above, were similarly false and misleading;

- (b) Represented that factual observations at the U. S. Bureau of Standards, Washington, D. C., on their tests of its product conducted simultaneously with tests of competitive products, substantiated all of its claims, and that said tests did not show any corrosion caused by its product to any cooling system metals and gaskets or rubber;

When in fact such observations did show corrosive effects on automotive metals used in the cooling system, on the distributor caps, ignition systems, and on water pumps on the engines; and

- (c) Falsely represented that its said product had been tested and approved by laboratories of Northwestern University, Purdue University, Firestone Tire and Rubber Co., Pittsburgh Plate Glass Co., and hundreds of other reputable commercial and university laboratories throughout the United States;

With effect of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that such false representations were true, thereby inducing such public to purchase substantial quantities of the product in question:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Stanley & Smoyer, 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 Freedom Chemical Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Freedom Chemical 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 2021 N. B. C. Building, 815 Superior Avenue, East Cleveland, Ohio.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a so-called antifreeze solution designated "60 Below" for use in automobile radiators. Said product is sold to jobbers, garages, and service stations for resale to the public. Respondent causes its said product, when sold, to be transported from its aforesaid place of business in the State of Ohio to purchasers located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its antifreeze product, "60 Below," the respondent has circulated and is now circulating among prospective purchasers throughout the United States, by United States mails, advertisements in newspapers and trade journals, by means of advertising folders, pamphlets, circular letters, streamers, and other advertising material, all of general circulation, many false statements and representations concerning its said product. Among and typical of such false statements and representations are the following:

THE PERFECT PERMANENT ANTI-FREEZE.

It is noncorrosive—completely antirust against all automobile metals.

It is nongelatinous—nongumous—will not crawl nor seep.

60 Below is not dangerously corrosive to automotive: iron, steel, bronze, solder, copper, brass, aluminum.

60 Below is less corrosive, on the whole, than tap water.

60 Below anti-corrosion performance compares favorably with any known premium quality anti-freeze marketed in the United States.

Complaint

36 F. T. C.

We hold that 60 Below is far removed from the classification of those anti-freeze products which in the past have proven ruinous and costly in use.

L. H. LETTS, *Pres.*

FREEDOM CHEMICAL COMPANY

Cleveland, Ohio.

Reporting factual observations at U. S. Bureau of Standards, Washington, on their tests of our 60 Below. On November 11th three Ford motors under load, two in second gear, had already run more than 11,000 miles at 25 miles per hour, protected to zero degrees, operating temperature 176 degrees, continuous since October fifteenth, with the two national brands of permanent anti-freeze you know best simultaneously tested for comparison. Observation of performance of 60 Below on this mileage, which represents over the average one year normal driving, substantiating all our product claims, previous tests, and satisfactory consumer experience. As evidenced by these comparative U. S. Bureau of Standards tests, results show 60 Below does not corrode through any cooling system, metals, pumps, gaskets or rubber.

(Signed) R. EARL BURROWS

60 Below has been tested and approved by the laboratories of Northwestern University, Purdue University, Firestone Tire and Rubber Company, Pittsburgh Plate Glass Company—we could go on with hundreds more of such reputable commercial and universal laboratories who are interested in the development and progress of these, our United States, and its people.

Complete absence of corrosion of any kind * * * A safe unexcelled anti-freeze.

Calcium bichlorinate in plain English spells 60 Below permanent anti-freeze.

Through the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, the respondent has represented directly or by implication that its product, "60 Below," is a perfect permanent antifreeze for use in automobile and truck radiators; that it will not become gelatinous, will not gum up, will not crawl or seep; that it will not cause any corrosive damage to automotive metals, such as iron, steel, bronze, solder, copper, brass, and aluminum; that it is less corrosive to automotive metals than ordinary tap water; that its anticorrosive qualities compare favorably with any known premium qualities antifreeze marketed and sold in the United States; that it is in a superior class from other antifreeze solutions which have proven ruinous and costly in use; that factual observations of tests being conducted by U. S. Bureau of Standards at Washington, D. C., of respondent's product simultaneously conducted with products of competitors substantiate all of respondent's claims for its product, and that said tests did not show any corrosion caused by said product to any cooling-system metals and gaskets or rubber; that its product, "60 Below," has been tested and approved by laboratories of Northwestern University, Purdue University, Firestone Tire & Rubber Co., Pittsburgh Plate Glass Co. and hundreds of other reputable, commercial, and universal laboratories throughout the United States; that its product contains a chemical called calcium bichlorinate.

PAR. 4. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. Respondent's product is not a perfect permanent antifreeze. Respondent's product is composed of a calcium chloride base and is inferior to antifreeze solutions containing glycerin or alcoholic bases. Said product causes seepage. It is highly corrosive to automotive metals such as iron, steel, bronze, solder, copper, brass, and aluminum. It is more corrosive than ordinary tap water. Said product's noncorrosive qualities do not compare favorably with other quality antifreeze solutions sold in the United States. It is not in a class to itself over other antifreeze products. Factual observations of tests conducted by U. S. Bureau of Standards on respondent's product simultaneously with tests on competing antifreeze solutions did not substantiate claims made by respondent for its product. Said tests showed corrosive effects on automotive metals used in the cooling system, on the distributor caps, ignition systems, and on water pumps on the engines used in said tests. There is no such chemical as calcium bichlorinate. Respondent's product is composed of calcium chloride. Respondent's product has not been approved after test at laboratories conducted by Northwestern University, Purdue University, Firestone Tire & Rubber Co., nor Pittsburgh Plate Glass Co.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true and to induce, and does induce, the public to purchase substantial quantities of respondent's product as a result of such belief.

REPORT, FINDINGS AS TO FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 10, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Freedom Chemical Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by the respondent. A hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was entered into between the attorney for the Commission and the attorney for respondent and read into the record. This stipulation provides that the facts therein set forth shall be taken as the facts in this proceeding and in lieu of testimony in support of the allegations of

Findings

36 F. T. C.

the complaint or in opposition thereto. Respondent expressly waived the filing of a Trial Examiner's report upon the evidence. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and stipulation as to the facts (such stipulation having been accepted and approved by 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Freedom Chemical 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 2021 N. B. C. Building, 815 Superior Avenue, East Cleveland, Ohio.

PAR. 2. The respondent for more than 1 year prior to January 8, 1943, had been engaged in the sale and distribution of a so-called anti-freeze solution designated "60 Below" for use in automobile radiators. Said product was sold to jobbers for resale through garages and service stations to the public. Respondent caused its said product, when sold, to be transported from its aforesaid place of business in the State of Ohio to purchasers located in various other States of the United States and in the District of Columbia. The respondent at all times mentioned herein maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its antifreeze product "60 Below," the respondent circulated among prospective purchasers throughout the United States, by United States mails, advertisements in trade journals, by means of advertising folders, pamphlets, circular letters, streamers, and other advertising material all of general circulation, many statements and representations concerning its said product. Among and typical of such statements and representations are the following:

THE PERFECT PERMANENT ANTI-FREEZE.

It is non-corrosive—completely anti-rust against all automotive metals.

It is non-gelatinous—non-gummons—will not crawl nor seep.

60 Below is not dangerously corrosive to automotive: iron, steel, bronze, solder, copper, brass, aluminum.

60 Below is less corrosive, on the whole, than tap water.

60 Below anti-corrosion performance compares favorably with any known premium quality anti-freeze marketed in the United States.

We hold that 60 Below is far removed from the classification of those anti-freeze products which in the past have proven ruinous and costly in use.

60 Below has been tested and approved by the laboratories of Northwestern University, Purdue University, Firestone Tire and Rubber Company, Pittsburgh Plate Glass Company—we could go on with hundreds more of such reputable commercial and universal laboratories who are interested in the development and progress of these, our United States, and its people.

Complete absence of corrosion of any kind * * * A safe unexcelled anti-freeze.

Calcium bichlorinate in plain English spells 60 Below permanent anti-freeze.

L. H. LETTS, *Pres.*

FREEDOM CHEMICAL COMPANY,
Cleveland, Ohio.

Reporting factual observations at U. S. Bureau of Standards, Washington, on their tests of our 60 Below. On November 11 the three Ford motors under load, two in second gear, had already run more than 11,000 miles at 25 miles per hour, protected to zero degrees, operating temperature 176 degrees, continuous since October fifteenth, with the two national brands of permanent anti-freeze you know best simultaneously tested for comparison. Observation of performance of 60 Below on this mileage, which represents over the average one year normal driving, substantiating all our product claims, previous tests, and satisfactory consumer experience. As evidenced by these comparative U. S. Bureau of Standards tests, results show 60 Below does not corrode through any cooling system, metals, pumps, gaskets or rubber.

(Signed) R. EARL BURROWS.

Through the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, the respondent represented directly or by implication that its product, "60 Below," was a perfect permanent antifreeze for use in automobile and truck radiators; that it would not become gelatinous, and would not gum up, crawl, or seep; that it would not cause any corrosive damage to automotive metals, such as iron, steel, bronze, solder, copper, brass, and aluminum; that it was less corrosive to automotive metals than ordinary tap water; that its anticorrosive qualities compared favorably with any known premium quality antifreeze marketed and sold in the United States; that it was in a superior class from antifreeze solutions which had proven ruinous and costly in use; that factual observations of tests being conducted by the United States Bureau of Standards at Washington, D. C., of respondent's product simultaneously conducted with products of competitors substantiated all of respondent's claims for its product, and that said tests did not show any corrosion caused by said product to any cooling system metals and gaskets or rubber; that its products, "60 Below," had been tested and approved by laboratories of Northwestern University, Purdue University, Firestone Tire & Rubber Co., Pittsburgh Plate Glass Co., and hundreds of other reputable commercial and university laboratories throughout the United States; and that its product contained a chemical called calcium bichlorinate.

Order

36 F. T. C.

PAR. 4. The foregoing claims, statements, and representations were grossly exaggerated, false, and misleading. Respondent's product was not a perfect permanent antifreeze. Respondent's product was composed of a calcium chloride base and was inferior to antifreeze solutions containing glycerin or alcoholic bases. Said product caused seepage. It was highly corrosive to automotive metals, such as iron, steel, bronze, solder, copper, brass, and aluminum. It was more corrosive than ordinary tap water. Said product's noncorrosive qualities did not compare favorably with quality antifreeze solutions sold in the United States. It was not in a class to itself over antifreeze products which were injurious to cars. Factual observations of tests conducted by the United States Bureau of Standards on respondent's product simultaneously with tests on competing antifreeze solutions did not substantiate claims made by respondent for its product. Said tests showed corrosive effects on automotive metals used in the cooling system, on the distributor caps, ignition systems, and on water pumps on the engines used in said tests. There is no such chemical as calcium bichlorinate. Respondent's product was produced from calcium chloride. Respondent's product had not been approved after laboratory tests conducted by Northwestern University, Purdue University, Firestone Tire & Rubber Co., or Pittsburgh Plate Glass Co. Because of the highly corrosive properties of respondent's said product when in contact with metals, it was not a safe antifreeze for use in automotive engine cooling systems.

PAR. 5. The use by the respondent of the foregoing misleading statements and representations, disseminated as aforesaid, had the tendency and capacity to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations were true, and induced the public to purchase substantial quantities of respondent's product as a result of such belief.

CONCLUSION

The foregoing 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 (no answer having been filed by respondent) and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent-

ent upon the record; 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, Freedom Chemical Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its antifreeze solution designated "60 Below," or any other antifreeze solution of substantially similar composition or possessing substantially similar chemicals or ingredients, 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 product, "60 Below," is a perfect permanent antifreeze; that it is noncorrosive to automotive metals; that it is nongelatinous, nonguminous, and will not crawl or seep; that "60 Below" is not corrosive to iron, steel, bronze, solder, copper, brass, or aluminum; that "60 Below" is less corrosive than tap water, that "60 Below" anticorrosion performance compares favorably with any known premium quality antifreeze marketed in the United States; that "60 Below" is superior to antifreeze products which have proven ruinous and costly in use.

2. Representing, directly or by implication, that tests conducted by the United States Bureau of Standards show that respondent's product, "60 Below," is noncorrosive to cooling systems, metals, pumps, gaskets, or rubber.

3. Representing, directly or by implication, that respondent's antifreeze products, "60 Below," has been approved by the laboratories of Northwestern University, Purdue University, Firestone Tire & Rubber Co., or Pittsburgh Plate Glass Co., as a result of tests of respondent's product; or that said product has been approved by any commercial or university laboratory, when such is not the fact.

4. Representing, directly or by implication, that respondent's product, "60 Below," contains a chemical called "calcium bichlorinate."

5. Representing "60 Below" as an antifreeze preparation for use in the cooling systems of automotive engines, without disclosing that said product is highly corrosive when in contact with metals such as iron, steel, bronze, solder, copper, brass, and aluminum.

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

36 F. T. C.

IN THE MATTER OF
THE PREMIER CONE BAKING CO.

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

Docket 4947. Complaint, Apr. 19, 1943—Decision, June 24, 1943

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of boxes of ice-cream cones, a small number of which in each box were molded to show a star, for use by retailers and other ice-cream sellers in distribution of ice cream to their customers, under a plan involving use of a lottery scheme or game of chance, by which consumers who secured by chance one of said star-bearing cones received without further charge an additional cone;

Sold, along with display sheets depicting child, adult, and ice cream cones and bearing legend "Look, Mom! Lucky Star Gets You Another FREE," such assortments to wholesalers, jobbers, and ice-cream manufacturers by whom they were resold to retailers and employed as aforesaid in the sale of cones of ice cream to purchasing public; and thereby

Supplied to and placed in hands of the latter, means of conducting lotteries in the sale of its products and ice cream, in accordance with said plan involving sale of a chance to procure a free additional ice-cream cone, contrary to an established public policy of the United States Government and in competition with many who do not use any method contrary to public policy;

With result that many dealers and ultimate purchasers were attracted by said sales plan and the element of chance involved therein, and were induced to buy and sell its merchandise in preference to that sold by aforesaid competitors; and with tendency and capacity unfairly to divert trade in commerce to it from them:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair 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 the Premier Cone Baking 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Premier Cone Baking Co., is a corporation, organized and operating under and by virtue of the laws of

950

Complaint

the State of Ohio, with its principal office and place of business located at 2345 Florence Avenue, Cincinnati, Ohio. Respondent is now, and for some time last past has been, engaged in the manufacture of ice-cream cones and in the sale and distribution thereof to dealers, jobbers, and ice-cream manufacturers in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said ice-cream cones, when sold, to be transported from its aforesaid place of business in Cincinnati, Ohio, to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio and in the District of Columbia. There is now and has been for some time last past a course of trade by respondent in said ice-cream cones in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business respondent is now and has been in competition with other corporations and with individuals and firms engaged in the sale and distribution of ice-cream cones 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 manufactures and sells, and has manufactured and sold and distributed to ice-cream manufacturers and dealers certain of its ice-cream cones so molded, packed, and assembled as to involve the use of a lottery scheme or game of chance, when used by retail dealers to distribute ice cream to the purchasing and consuming public.

Respondent's method of molding, packing, and assembling its ice-cream cones is as follows: In each box of cones packed and assembled by respondent there are a small number which are molded to show a star; the remainder of the cones in the box are plain. Its cones are sold to jobbers for resale to retailers of ice cream or are sold to retailers who distribute ice cream to the consuming public. Retail dealers and others who sell ice cream to the consuming public use the respondent's cones to distribute the cones and ice cream to their customers by chance or lottery in the following manner:

A customer who purchases one of the cones bearing the star is awarded another cone of ice cream without additional charge. Customers who receive one of the plain cones receive only the cone for which they pay. The consuming purchaser is unable to determine whether the ice-cream cone which he purchases bears the star until the purchase has been made, and thus whether the purchaser of ice cream packed in one of respondent's cones will receive an additional ice-cream cone without additional charge is determined wholly by lot or chance.

Complaint

36 F. T. C.

Respondent supplies to the dealer selling its cones a display sheet bearing the following legend:

(Depicting child, adult and ice cream cones.)

LOOK, MOM! LUCKY STAR
Get You Another FREE!

Respondent has manufactured, packed, and assembled other ice-cream cones to be used in the distribution of ice cream by lottery or games of chance which vary in detail, but are the same in principle as those above-described.

PAR. 3. The wholesale dealers and jobbers and ice-cream manufacturers to whom respondent sells the above-described ice-cream cones resell said cones as packed by respondent to retail dealers, and said retail dealers sell and distribute cones to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products and ice cream in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale and distribution of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method and practice is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of said ice-cream cones to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional ice-cream cone free. Many individuals, firms, and corporations who manufacture, sell, and distribute ice-cream cones in competition with the respondent as above alleged do not use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy. Many dealers and ultimate purchasers of ice-cream cones are attracted by respondent's said method and sales plan and by the element of chance involved therein, and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said plan or method by respondent, because of said game of chance, has a tendency and capacity unfairly to divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent sales plans or methods.

PAR. 5. The aforesaid acts and practices of respondent as hereinabove alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of 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 April 19, 1943, issued and subsequently served its complaint in this proceeding upon respondent, the Premier Cone Baking Co., a corporation, charging it with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On May 14, 1943, respondent filed its answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Premier Cone Baking Co., is a corporation, organized and operating under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2345 Florence Avenue, Cincinnati, Ohio. Respondent is now, and for some time last past has been, engaged in the manufacture of ice cream cones and in the sale and distribution thereof to dealers, jobbers, and ice-cream manufacturers. Respondent causes said product, when sold, to be transported from its aforesaid place of business in Cincinnati, Ohio, to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio and in the District of Columbia. There is now, and has been for some time last past, a course of trade by respondent in said ice-cream cones in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business respondent is now, and has been, in competition with other corporations and with individuals and firms engaged in the sale and distribution of ice-cream cones 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 manufactures and sells, and has manufactured and sold and distributed, to ice-cream manufacturers and

Findings

36 F. T. C.

dealers certain of its ice-cream cones so molded, packed, and assembled as to involve the use of a lottery scheme or game of chance when used by retail dealers to distribute ice cream to the purchasing and consuming public.

Respondent's method of molding, packing, and assembling its ice-cream cones is as follows: In each box of cones packed and assembled by respondent there are a small number which are molded to show a star; the remainder of the cones in the box are plain. Its cones are sold to jobbers for resale to retailers of ice cream or are sold to retailers who distribute ice cream to the consuming public. Retail dealers and others who sell ice cream to the consuming public use the respondent's cones to distribute the cones and ice cream to their customers by chance or lottery in the following manner:

A customer who purchases one of the cones bearing the star is awarded another cone of ice cream without additional charge. Customers who receive one of the plain cones receive only the cone for which they pay. The consuming purchaser is unable to determine whether the ice-cream cone which he purchases bears the star until the purchase has been made, and thus whether the purchaser of ice cream packed in one of respondent's cones will receive an additional ice-cream cone without additional charge is determined wholly by lot or chance.

Respondent supplies to the dealer selling its cones a display sheet bearing the following legend:

(Depicting child, adult, and ice cream cones)

Look, Mom! Lucky Star,
Get You Another FREE!

Respondent has manufactured, packed, and assembled other ice-cream cones to be used in the distribution of ice cream by lottery or games of chance which vary in detail but are the same in principle as those above described.

PAR. 3. The wholesale dealers and jobbers and ice-cream manufacturers to whom respondent sells the above-described ice-cream cones resell said cones as packed by respondent to retail dealers, and said retail dealers sell and distribute cones to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products and ice cream in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale and distribution of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method and practice is contrary to an established public policy of the Government of the United States.

850

Order

PAR. 4. The sale of said ice-cream cones to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an additional ice-cream cone free. Many individuals, firms, and corporations who manufacture, sell, and distribute ice-cream cones in competition with the respondent, as above found, do not use said sales plan or method, or any sales or method involving a game of chance or the sale of a chance to win something by chance, or any other sales plan or method that is contrary to public policy. Many dealers and ultimate purchasers of ice-cream cones are attracted by respondent's said method and sales plan and by the element of chance involved therein, and have been, and are, induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said plan or method by respondent, because of said game of chance, has a tendency and capacity unfairly to divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent sales plans or methods.

CONCLUSION

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

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

It is ordered, That the respondent, the Premier Cone Baking 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 ice-cream cones or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Order

36 F. T. C.

1. Selling or distributing ice-cream cones so molded, packed, or assembled that sales to the general public of ice cream or other merchandise, when packed in said ice-cream cones, are to be made or, due to the manner in which said ice-cream cones are molded, packed, or assembled at the time they are 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 others ice-cream cones, some of which are molded with a star or other means of identification, together with a sales plan whereby such cones are to be used, or may be used, in distributing extra cones or containers of ice cream or other merchandise by lot or chance.

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

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

Syllabus

IN THE MATTER OF
SCREEN BROADCAST CORPORATION ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4736. Complaint, Mar. 19, 1942—Decision, June 25, 1943*

Where five corporations which (1) were engaged in the production and interstate sale, lease, rental, and distribution of commercial motion-picture films to or on the order of manufacturers and national advertisers of various products, and in the furnishing of display service to advertisers in motion-picture theaters through the use of such films, controlling more than 90 percent of the volume of business done in the motion picture screen advertising industry; (2) had under contract to display advertising films—under either national programs or cooperative programs, in latter of which cost is borne jointly by manufacturer and its local dealers—about 8,000 motion-picture theaters (of the approximately 18,000 in the United States) in small cities and towns; (3) were from time to time in free, active, and substantial competition with other film distributors and advertisers who produced their own films; and prior to the acts and practices below set forth, were in such competition with one another;

Acting in cooperation with one another or with and through corporate "General Screen Advertising" or "GSA" booking agency, controlled by one of their members, and its chairman, and also with and through their association, organized to adopt rules and regulations governing the handling of cooperative advertising films and programs, and its secretary—

- (a) Entered into understandings and agreements between and among themselves and with other film distributors as to screening rates and commissions and other terms and conditions in connection with the interstate sale, lease, rental, and distribution of films containing advertisements solicited from national advertisers; and pursuant to such understandings, etc., and in furtherance thereof (1) entered into individual contracts with moving-picture exhibitors for the exclusive privilege of exhibiting in their theaters commercial or advertising motion-picture films, usually for 5-year periods; (2) organized as their only channel for solicitation of national advertising contracts from manufacturers, aforesaid corporate "GSA," with the exception that two of their number also used as a booking agency for certain territory corporate "Screen Broadcast Corp." or "SBC," as below set forth; and (3) either directly or through their said booking agencies, fixed the display rates to be charged manufacturers, the rates, commissions, and other compensation to be allowed the agencies, and the terms and conditions under which national advertising films were to be shown in theaters; and

Where said "GSA" booking agency and said distributors—

- (b) Prepared, promulgated, executed, and carried out—except in the territory north of Virginia and east of Ohio, where aforesaid "SBC" had arrangements below described—uniform codistributor agreements whereunder (1) distributors were to furnish "GSA" a list of all theaters under contract, for classification by it according to size, circulation, desirability, and minimum rate

Syllabus

36 F. T. C.

per thousand weekly attendance; (2) without its specific authority, no distributor was to assign or make any listed theater available to any competitor for national motion-picture advertising, or list any theater contracts assigned to it by another; (3) no distributor was to accept or release any films other than cooperative film advertising for a national advertising account, unless booked and released through said "GSA"; (4) "GSA" was to have power arbitrarily to decide conflicts between distributors as to exhibitor contracts; (5) prescribed penalties were to be imposed for various violations of contract and rules governing the distribution of, and the fixed screening rates of compensation for, national film advertising; (6) distributors were to refer to "GSA" all prospects for such advertising; (7) "GSA" was to collect from national advertisers for all screen showings and remit to respective distributors a fixed percentage of the gross amounts collected; and (8) distributors were to observe certain "rate cards" issued by "GSA" for computing the screening rate for each theater on the basis of weekly attendance; and

Where aforesaid and certain other distributors—

- (c) Organized their aforesaid association and adopted and observed rules and regulations governing cooperative advertising transactions with manufacturers whereby (1) membership was limited to companies who were regularly engaged in furnishing film advertising display service for advertisers in theaters and had contracts therefor; (2) "standard advertising programs" consisted of those produced for manufacturers for their wholesale or retail outlets on either a sponsored or participating basis, and consisted of at least 13 films of specified length; (3) a standard rate book was printed by members after listing at semiannual meetings all theaters available for showing manufacturer-dealer programs, along with corresponding rates of compensation agreed to be observed in members' dealings with advertisers and theaters; (4) the "originator" or seller, of a standard program to a manufacturer, received a minimum commission of 10 percent on the gross volume of dealer contracts sold by the "participants," or association members who accepted the program and participated in the selling and servicing of it; (5) participants, upon acceptance of a program, leased or rented the necessary film prints from the originator at prices fixed by the association; and (6) participants made monthly reports to the originator showing the number of shipments they made on each originator's program; and

Where two of said distributors, said "SBC" booking agency, and its president—

- (d) Entered into understandings and agreements with respect to the sale of said advertising film to all national advertisers located in the northeastern United States; and

Where said "SBC" booking agency, pursuant thereto, and acting in concert with others above referred to—

- (e) Acted as exclusive national sales representative for said two distributors in the territory east of Ohio and north of Virginia, and part of Michigan, including Detroit, in which "SBC" had sole right to solicit and sell film advertising to all national advertisers whose home offices and advertising agencies were located therein, and in which said two distributors agreed not to accept any such advertising from any source other than "SBC"; and
- (f) Sold such advertising to such advertisers for screening in theaters controlled by said two distributors according to attendance figures or at rates of compensation listed with it by such distributors, but subject to the provision that if the distributors' attendance figures or listed rates with respect to

any theater were in excess of those published by aforesaid "GSA" booking agency, "SBC" was authorized to and did sell such advertising at "GSA's" figures;

With effect of unduly restraining and suppressing competition in the sale, leasing, rental, and distribution of commercial motion-picture films in commerce, and with capacity and tendency to create a monopoly therein:

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

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

Mr. Everett F. Haycraft for the Commission.

Mr. Willard S. McKay, of New York City, for Screen Broadcast Corporation and Albert E. Fair.

Mr. David Strickler and *Mr. Thomas M. Burgess*, of Colorado Springs, Colo., for General Screen Advertising, Inc., J. D. Alexander, Association of Advertising Film Companies and Alexander Film Co.

Rosen, Kammer, Wolff & Farrar, of New Orleans, La., for C. J. Mabry and Motion Picture Advertising Service Co., Inc.

Morrison, Nugent, Berger, Byers & Johns, of Kansas City, Mo., for United Film Ad Service, Inc.

Oppenheimer, Hodgson, Brown, Donnelly & Baer, of St. Paul, Minn. for Ray-Bell Films, Inc.

Mr. John Francis Thice, of Independence, Mo., for A. V. Cauger Service, Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the respondents named and represented in the caption hereof, and more particularly described and referred to as respondents herein, 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, Screen Broadcast Corporation, hereinafter referred to as respondent SBC., is a corporation, organized under the laws of the State of New York with its office and principal place of business located at 30 Rockefeller Plaza, New York City.

Respondent, Albert E. Fair, owns the entire capital stock of respondent, SBC., and is named respondent herein, individually, and as president of said corporation.

Respondent, General Screen Advertising, Inc., hereinafter referred to as respondent, GSA., is a corporation, organized under the laws of the State of Delaware in December 1937, with its office and prin-

Complaint

36 F. T. C.

principal place of business located at 400 North Michigan Avenue, Chicago, Ill. Said respondent corporation succeeded to the business of a corporation of the same name organized as a nonprofit corporation under the laws of the State of Illinois in 1933 by respondent, Alexander Film Co., and respondent, Motion Picture Advertising Service Co., Inc.

Respondent, J. D. Alexander, president of respondent, Alexander Film Co., owns the majority of the capital stock of respondent, GSA., and is named respondent herein, individually, and as chairman of the board of directors of said respondent, GSA.

Respondent, Association of Advertising Film Companies, hereinafter referred to as respondent association, is a voluntary unincorporated association of advertising film companies, including the respondents, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc. Said association was organized in September 1938, to adopt rules and regulations governing the handling of cooperative advertising films and programs.

Respondent, C. J. Mabry, vice president and treasurer of respondent, Motion Picture Advertising Service Co., Inc., is named respondent herein, individually, and as secretary of respondent association.

Respondent, Motion Picture Advertising Service Co., Inc., hereinafter referred to as respondent, MPA, is a corporation organized under the laws of the State of Louisiana with its office and principal place of business located at 1032 Carondelet Street, New Orleans, La.

Respondent, United Film Ad Service, Inc., hereinafter referred to as respondent, United Film, is a corporation organized under the laws of the State of Missouri with its office and principal place of business located at 2449 Charlotte Street, Kansas City, Mo.

Respondent, Ray-Bell Films, Inc., hereinafter referred to as respondent, Ray-Bell, is a corporation organized under the laws of the State of Minnesota with its office and principal place of business located at 2269 Ford Parkway, St. Paul, Minn.

Respondent, Alexander Film Co., hereinafter referred to as respondent, Alexander, is a corporation organized under the laws of the State of Delaware with its office and principal place of business located in Colorado Springs, Colo.

Respondent, A. V. Cauger Service, Inc., hereinafter referred to as respondent, Cauger, is a corporation organized under the laws of the State of Missouri with its office and principal place of business located at 109-22 Winner Road, Independence, Mo.

PAR. 2. The said respondents, MPA, United Film, Ray-Bell, Alexander, and Cauger, hereinafter referred to collectively as respondent

distributors, are all engaged in the business of producing, selling, leasing, renting, and distributing commercial motion-picture films to or on the order of manufacturers and national advertisers of various products, and other distributors of motion-picture films, and the furnishing of display service to advertisers in motion-picture theaters through the use of such films. Said respondent distributors cause said films, when produced, sold, leased, or rented to be transported from their respective studios and places of business to motion-picture theaters located throughout the several States of the United States and in the District of Columbia, where said films are displayed on the moving-picture screens of said theaters for a specified length of time, usually 1 week, at the conclusion of which, said films are returned to respondent distributors for any necessary repairs thereto and then said films are again transported to and from other theaters in the same manner. There has been, and now is, a constant recurring course of interstate trade and commerce in said films throughout the several States of the United States and in the District of Columbia.

The business of distributing advertising films originated in showing screen advertising for local merchants in local theaters and this was, and still is, known as local advertising. In the beginning advertising films for display on local moving-picture screens were produced by the film distributor who serviced the theater and handled the entire transaction, paying or allowing the theater a certain amount for the use of the screen and retaining the balance of the amount of compensation received from the merchant. This form of local screen advertising is still carried on by all of the respondent distributors on an extensive scale, each distributor handling such advertising in its own way.

Approximately 12 years ago, manufacturers of nationally advertised products became interested in motion-picture screen advertising and through their advertising agencies put on advertising campaigns with various advertising film distributors who were supplying commercial motion-picture film to exhibitors. As a result there grew up in the screen-advertising industry the production and use of so-called national advertising films, consisting of short screen playlets produced in black and white, or color, and with sound, depicting the products of manufacturers, the cost of production and screening of which was entirely borne by the manufacturer; and so-called cooperative advertising films, which featured similar advertising instigated by the manufacturer, but the cost of which is borne jointly by the manufacturer and its local dealers. Where it is desired, a dealer signature trailer may be added to the film at the expense of the manufacturer or dealer, or both.

Complaint

36 F. T. C.

There are now in the United States approximately 16,000 motion-picture theaters in operation. Of this number, approximately 8,000 located in small cities and towns are recognized as good prospects for national and cooperative screen advertising and are under contract with respondent distributors to display films advertising products under either national advertising or cooperative programs.

PAR. 3. Said respondent distributors during the past 12 years have, from time to time, been in free, active, and substantial competition with other film distributors in the sale, rental, and distribution of commercial motion-picture films in commerce and also in competition with some advertisers who produce their own films and seek to have them displayed or shown on the screens of local theaters. Prior to the adoption of the practices hereinafter alleged, respondent distributors were in free, active, and substantial competition with each other, and but for the acts and practices hereinafter alleged, said respondent distributors and other distributors would now be in free, active, and substantial competition.

Said respondent distributors constitute a large and important part of the motion-picture screen advertising industry, controlling more than 90 percent in the aggregate of the volume of business done in said industry. Said respondent distributors, as allied and banded together in respondents, SBC., GSA., and Association, are enabled thereby to exercise more effectively the control and influence of trade and commerce in said industry.

PAR. 4. Respondent distributors acting in cooperation with each other and through and in cooperation with respondents, SBC., respondents, GSA., and respondent, Association, and individual respondents, Albert E. Fair, J. D. Alexander, and C. J. Mabry, during the period of time, to wit, since the year 1933, and particularly during and since the year 1937, have entered into understandings, agreements, combinations, and conspiracies between and among themselves and with other film distributors to hinder and suppress competition as to the screening rates and commissions and other charges in the interstate sale, lease, rental, and distribution of advertising films containing advertisements solicited from national advertisers; to restrain interstate trade in said advertising films, to hinder and suppress competition between and among producers and distributors of said advertising films, and to create a monopoly in the interstate sale, lease, rental, and distribution of said advertising films. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondents have acted in concert and in cooperation with each other in doing and performing the following methods, acts, and practices:

(a) The respective respondent distributors entered into individual contracts with moving-picture exhibitors for the exclusive privilege of exhibiting commercial or advertising motion-picture films in the theater or theaters owned or controlled by the said exhibitors for a specified period of time, usually for 5 years.

(b) Respondent distributors organized or caused to be organized, respondent GSA, and respondent, SBC, as booking agencies to solicit national advertising contracts from manufacturers for and on behalf of respondent distributors.

(c) Respondent distributors, either directly or through respondents, GSA and SBC, determined and fixed the screening rates to be charged manufacturers, and the rates, commissions, and other amounts of compensation to be paid or allowed the booking agencies and exhibitors and the terms and conditions under which national advertising films are to be shown in various theaters of exhibitors with whom respondent distributors have contracts.

(d) Respondents, MPA and United Film, their officers and directors, entered into a distributors' agreement with respondent, SBC, and respondent, Fair and others, in October 1939, to remain in effect until the year 1945, containing, among others, provisions to the following effect: (1) That respondent, SBC, shall act as exclusive national sales representative for respondents, MPA and United Film, in the Northeastern territory, comprising roughly the territory east of the State of Ohio, north of the State of Virginia, and a part of the State of Michigan; (2) that in said territory respondent, SBC, and respondent, Fair, shall have the sole and exclusive right to solicit and sell national motion-picture film advertising to all national advertisers (those who carry advertisements in at least three magazines with circulation in three or more States) whose home offices and whose advertising agencies are located within said territory; and that each of the said distributors agree not to accept any national motion-picture film advertising from any source other than SBC in said territory; (3) that SBC will sell motion-picture film advertising to such national advertisers for screening in theaters controlled by the said distributors according to attendance figures or screening rates of compensation listed with said SBC by the respective distributors: *Provided, however,* That if any said distributor's attendance figures or listed rates with respect to any theater is in excess of that established by respondent, GSA in its published attendance listings or compensation ratings, the said SBC is authorized to sell national advertising for such theaters at the attendance figures and rates published by said respondent GSA.

Complaint

36 F. T. C.

(e) Respondent distributors and respondent, GSA, in 1940 prepared, promulgated, and executed uniform codistributor agreements between respondent, GSA, and respondent distributors containing provisions to the following effect: (1) That respondent distributors shall furnish respondent, GSA, a list of all theaters under contract which are to be classified by respondent, GSA, according to size, circulation, desirability, and minimum rate per thousand weekly attendance; (2) that without specific authority, from respondent, GSA, no distributor will make any theater so listed available to any competitor for national motion-picture advertising, nor list any theater contracts assigned to it by another; (3) that the distributors shall not accept or release any film, except cooperative film advertising for a national advertising account, unless such film is booked and released through respondent, GSA; (4) that respondent, GSA, shall have power to arbitrarily decide conflicts between distributors as to contracts with exhibitors; (5) a list of penalties were prescribed for various violations of the contract and rules governing distribution of, and the fixed screening rates of compensation for, national film advertising; (6) that respondent distributors shall refer to respondent GSA, all prospects for national advertising; (7) that respondent, GSA, shall collect from the national advertisers for all screen showings and remit to the respective distributors a fixed percentage of the gross amount collected; (8) that respondent distributors shall observe the rate card issued by respondent, GSA, for computing the screening rate for, or amount of compensation due, each theater based upon weekly attendance. Respondent distributors and respondent, GSA, carried out and put into effect all the above-described provisions of said codistributor agreements throughout the country except in the territory north of the State of Virginia and east of the State of Ohio, where respondent, SBC, had the arrangement described in subparagraph (d) preceding.

(f) Respondent distributors and other distributors organized the respondent association in 1938 and adopted the following rules and regulations governing cooperative advertising transactions with manufacturers, which have since been observed by said respondent distributors: (1) Membership in respondent association is limited to companies who are regularly engaged in furnishing film advertising display service for advertisers in theaters, and who have contracts for such service with theaters; (2) standard advertising programs of the association consist of programs produced for manufacturers for their wholesale or retail outlets on either a sponsored or participating basis and consist of at least 13 films of specified length. A sponsored film program is one where the manufacturer has paid for all negatives and film prints and assists the association in publicizing the

program to its dealers, but does not participate with the dealers in the cost of the showings. A participating or cooperative program is a sponsored program in which the manufacturer also participates with the local dealer in the cost of display service in theaters; (3) the association member who sells a standard association program to a manufacturer is known as the originator and the other members of the association who accept it and participate in the selling and servicing of the program are known as participators; (4) a standard rate book is printed by the association members after semiannual meetings during which all theaters available for showing manufacturer-dealer programs are listed with corresponding rates of compensation which the members agree to observe in their dealings with such theaters; (5) the originator receives a minimum commission of 10 percent on gross volume of dealer contracts sold by participators; (6) participators upon acceptance of a program from originator lease or rent the necessary supply of film prints from the originator at rates fixed by the association; (7) participators make monthly reports to the originator showing number of shipments made by participators on each originator's program.

PAR. 5. Each of the said respondents at the times herein mentioned acted in concert and in cooperation with one or more of the other respondents in doing and performing the methods, acts, and practices hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 6. The capacity, tendency, and effect of the aforesaid understandings, agreements, combinations, and conspiracies, and the methods, acts, and practices engaged in and performed pursuant thereto and in furtherance thereof are, and have been (a) to unduly restrain, lessen, injure, and suppress competition in the interstate sale, lease, rental, and distribution of commercial motion-picture films; (b) to unduly hinder and prevent competing producers, sellers, and distributors of commercial motion-picture films from selling, leasing, renting, and distributing such film for shipment from the various States of the United States where said manufacturers, producers, sellers, and lessors are located to and into various other States where the exhibitors of said films are located; (c) to unduly impede, hinder, and prevent manufacturers of various commodities producing their own commercial motion-picture films from exhibiting said films on the screens of motion-picture theaters located throughout the several States and from transporting such film from the various States where said manufacturers are located to the prospective exhibitors thereof located in other States of the United States; (d) to tend to create in respondents a monopoly in the sale, leasing, rental, and distribution of com-

Findings

36 F. T. C.

mercial motion-picture films in interstate commerce; (e) to prejudice and injure the public and manufacturers, producers, sellers, lessors, and distributors of commercial motion-picture films and others who do not conform to the program of the respondents, or who do not desire, but are compelled, to conform to said program.

PAR. 7. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondent distributors and of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in the sale, leasing, rental, and distribution of commercial motion-picture films in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in commercial motion-picture films and have a dangerous tendency to create in respondents a monopoly in the sale, leasing, rental, and distribution of said films, 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 March 19, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of respondents' answers to the complaint, 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. Subsequently, a stipulation of facts was entered into by and between W. T. Kelley, chief counsel for the Commission, and the attorneys for all of the respondents, except Screen Broadcast Corporation and Albert E. Fair, which provided that, subject to the approval of the Commission, the statement of facts in such stipulation might be made a part of the record herein and might be taken as facts established in the proceeding, and that the Commission might proceed upon such statement of facts, together with any testimony taken in the proceeding, 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 as to such respondents without the filing of briefs or oral argument.

Thereafter, additional hearings were held before the trial examiner, at which additional testimony and other evidence were introduced with respect to respondents, Screen Broadcast Corporation and Albert E. Fair, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, stipulation of facts (such stipulation having been accepted and approved by the Commission), testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions filed by respondents, Screen Broadcast Corporation and Albert E. Fair, to such report, brief in support of the complaint and brief in opposition thereto filed on behalf of respondents, Screen Broadcast Corporation and Albert E. Fair, and oral argument by the attorney for the Commission and the attorney for respondents, Screen Broadcast Corporation and Albert E. Fair; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Screen Broadcast Corporation, hereinafter referred to as respondent, SBC, is a corporation, organized under the laws of the State of New York, with its office and principal place of business located at 30 Rockefeller Plaza, New York, N. Y.

Respondent, Albert E. Fair, is the president of respondent, SBC. The entire capital stock of respondent, SBC is owned by respondent, Fair, and members of his family.

Respondent, General Screen Advertising, Inc., hereinafter referred to as respondent, GSA, is a corporation, organized for profit under the laws of the State of Delaware in December, 1937, with its office and principal place of business located at 400 North Michigan Avenue, Chicago, Ill. This respondent corporation succeeded to the business of a corporation of the same name organized as a nonprofit corporation under the laws of the State of Illinois in 1933 by respondents, Alexander Film Co. and Motion Picture Advertising Service Co., Inc. Respondent, Alexander Film Co., owns the majority of the capital stock of respondent, GSA.

Respondent, J. D. Alexander, is chairman of the board of directors of respondent, GSA.

Respondent, Association of Advertising Film Companies, hereinafter referred to as respondent Association, is a voluntary unincorporated association of advertising film companies, including the re-

spondents, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc. The association was organized in September 1938, to adopt rules and regulations governing the handling of co-operative advertising films and programs.

Respondent, C. J. Mabry, is vice president of respondent, Motion Picture Advertising Service Co., Inc. At the time of the issuance of the complaint herein he was Secretary of respondent association and treasurer of respondent, Motion Picture Advertising Service Co., Inc., but has since resigned from such positions.

Respondent, Motion Picture Advertising Service Co., Inc., hereinafter referred to as respondent, MPA, is a corporation organized under the laws of the State of Louisiana with its office and principal place of business located at 1032 Carondelet Street, New Orleans, La.

Respondent, United Film Ad Service, Inc., hereinafter referred to as respondent, United Film, is a corporation organized under the laws of the State of Missouri with its office and principal place of business located at 2449 Charlotte Street, Kansas City, Mo.

Respondent, Ray-Bell Films, Inc., hereinafter referred to as respondent, Ray-Bell, is a corporation organized under the laws of the State of Minnesota with its office and principal place of business located at 2269 Ford Parkway, St. Paul, Minn.

Respondent, Alexander Film Co., hereinafter referred to as respondent, Alexander Co., is a corporation organized under the laws of the State of Delaware with its office and principal place of business located in Colorado Springs, Colo.

Respondent, A. V. Cauger Service, Inc., hereinafter referred to as respondent, Cauger, is a corporation organized under the laws of the State of Missouri with its office and principal place of business located at 109-22 Winner Road, Independence, Mo.

PAR. 2. The respondents, MPA, United Film, Ray-Bell, Alexander Co., and Cauger, hereinafter referred to collectively as respondent distributors, are all engaged in the business of producing, selling, leasing, renting, and distributing commercial motion-picture films to or on the order of manufacturers and national advertisers of various products and other distributors of motion-picture films, and the furnishing of display service to advertisers in motion-picture theaters through the use of such films. The respondent distributors cause their films, when produced, sold, leased, or rented, to be transported from their respective studios and places of business to motion-picture theaters located throughout the several States of the United States and in the District of Columbia, where such films are displayed on the moving-picture screens of such theaters for a specified length of time,

usually 1 week, at the conclusion of which the films are returned to respondent distributors for any necessary repairs thereto and the films are then again transported to and from other theaters in the same manner. There has been and now is a constant course of trade and commerce by respondent distributors in such films among and between the several States of the United States and in the District of Columbia.

PAR. 3. The business of distributing advertising films originated in showing screen advertising for local merchants in local theaters, and this was and still is known as local advertising. In the beginning, advertising films for display on local moving-picture screens were produced by the film distributor, who serviced the theater and handled the entire transaction, paying or allowing the theater a certain amount for the use of the screen and retaining the balance of the amount of compensation received from the merchant. This form of local screen advertising is still carried on by all of the respondent distributors on an extensive scale, each distributor handling such advertising in its own way:

Approximately 12 years ago, manufacturers of nationally advertised products became interested in motion picture screen advertising, and through their advertising agencies put on advertising campaigns with various advertising film distributors who were supplying commercial motion-picture film to exhibitors. As a result, there has grown up in the screen advertising industry the production and use of so-called national advertising films (consisting of short screen playlets produced in black and white or color and with sound) depicting the products of manufacturers, the cost of production and screening of which is entirely borne by the manufacturer. There has also grown up in the industry the use of so-called cooperative advertising films, which feature similar advertising initiated by the manufacturer but the cost of which is borne jointly by the manufacturer and its local dealers. Where it is desired, a dealer signature trailer may be added to the film at the expense of the manufacturer or dealer, or both.

There are now in the United States approximately 16,000 motion picture theaters in operation. Of this number, approximately 8,000 located in small cities and towns are recognized as good prospects for national and cooperative screen advertising and are under contract with respondent distributors to display films advertising products under either national advertising or cooperative programs.

PAR. 4. The respondent distributors, during the past 13 years, have from time to time been in free, active, and substantial competition with other film distributors in the sale, rental, and distribution of

commercial motion-picture films in interstate commerce, and also in competition with some advertisers who produce their own films and seek to have them displayed or shown on the screens of local theaters. Prior to the adoption of the practices hereinafter described, respondent distributors were in free, active, and substantial competition with one another, and but for such acts and practices the respondent distributors and other distributors would now be in free, active, and substantial competition.

The respondent distributors constitute the major part of the motion-picture screen advertising industry, controlling in the aggregate more than 90 percent of the volume of business done in the industry.

PAR. 5. The respondent distributors, acting in cooperation with one another and through and in cooperation with respondent, GSA, respondent association, and respondents, J. D. Alexander and C. J. Mabry, have at various times since the year 1933, and particularly during and since the year 1937, entered into understandings, agreements, combinations, and conspiracies between and among themselves and with other film distributors as to screening rates and commissions and other terms and conditions in connection with the interstate sale, lease, rental, and distribution of advertising films containing advertisements solicited from national advertisers. Pursuant to such understandings, agreements, combinations, and conspiracies, and in furtherance thereof, these respondents have acted in concert and in cooperation with one another in doing and carrying out the following acts and practices:

(a) The respective respondent distributors entered into individual contracts with moving-picture exhibitors for the exclusive privilege of exhibiting commercial or advertising motion-picture films in the theater or theaters owned or controlled by such exhibitors for a specified period of time, usually for 5 years.

(b) Respondent distributors organized or caused to be organized respondent, GSA, as their only booking agency and only channel for solicitation of national advertising contracts from manufacturers, except that respondents, MPA and United Film, have also used respondent, SBC, as a booking agency, as set forth in paragraph 6.

(c) Respondent distributors, either directly or through their booking agency or agencies, determined and fixed the display rates to be charged manufacturers and the rates, commissions, and other amounts of compensation to be paid or allowed the booking agency or agencies, and the terms and conditions under which national advertising films are to be shown in various theaters of exhibitors with whom respondent distributors have contracts.

(d) In 1940, respondent distributors and respondent, GSA, prepared, promulgated, and executed uniform codistributor agreements

between respondent, GSA, and respondent distributors containing provisions to the following effect:

1. That respondent distributors shall furnish respondent, GSA, a list of all theaters under contract and which are to be classified by respondent, GSA, according to size, circulation, desirability, and minimum rate per thousand weekly attendance.

2. That without specific authority from respondent, GSA, no distributor will assign or make any theater so listed available to any competitor for national motion-picture advertising, nor list any theater contracts assigned to it by another.

3. That the distributors shall not accept or release any film except cooperative film advertising for a national advertising account, unless such film is booked and released through respondent, GSA.

4. That respondent, GSA, shall have power arbitrarily to decide conflicts between distributors as to contracts with exhibitors.

5. That certain prescribed penalties be imposed for various violations of the contract and rules governing the distribution of and the fixed screening rates of compensation for national film advertising.

6. That respondent distributors shall refer to respondent GSA all prospects for national advertising.

7. That respondent, GSA, shall collect from the national advertisers for all screen showings and remit to the respective distributors a fixed percentage of the gross amount collected.

8. That respondent distributors shall observe certain "rate cards" issued by respondent, GSA, for computing the screening rate for each theater based upon weekly attendance.

Respondent distributors and respondent, GSA, put into effect and carried out these provisions of such codistributor agreements throughout the United States except the territory north of the State of Virginia and east of the State of Ohio, where respondent, SBC, had the arrangement described in paragraph 6.

(e) In 1938, respondent distributors and certain other distributors organized the respondent association and adopted the following rules and regulations governing cooperative advertising transactions with manufacturers, which have since been observed by the respondent distributors:

1. Membership in respondent association is limited to companies who are regularly engaged in furnishing film advertising display service for advertisers in theaters, and who have contracts for such service with theaters.

2. Standard advertising programs of the association consist of programs produced for manufacturers for their wholesale or retail outlets on either a sponsored or participating basis, and consist of at least

13 films of specified length. A sponsored film program is one where the manufacturer has paid for all negatives and film prints, and assists the association in publicizing the program to its dealers but does not participate with the dealers in the cost of the showings. A participating or cooperative program is a sponsored program in which the manufacturer also participates with the local dealer in the cost of display service in theaters.

3. The association member who sells a standard association program to a manufacturer is known as the "originator," and the other members of the association who accept the program and participate in the selling and servicing of it are known as "participants."

4. A standard rate book is printed by the association members after semiannual meetings during which all theaters available for showing manufacturer-dealer programs are listed, with corresponding rates of compensation which the members agree to observe in their dealings with advertisers and theaters.

5. The originator receives a minimum commission of 10 percent on the gross volume of dealer contracts sold by participants.

6. Participants, upon acceptance of a program from an originator, lease or rent the necessary supply of film prints from the originator at rates fixed by the association.

7. Participants make monthly reports to the originators showing the number of shipments made by participants on each originator's program.

PAR. 6. In October 1939, respondents, MPA, United Film, SBC, and Albert E. Fair, entered into certain understandings, agreements, combinations, and conspiracies with respect to the sale of motion picture film advertising to all national advertisers whose home offices and advertising agencies are located within a designated portion of the United States, such understandings, agreements, combinations, and conspiracies being evidenced by a written contract whose terms provide that it shall remain in effect until July 1, 1945. Pursuant to such understandings, agreements, combinations, and conspiracies, these respondents, acting in concert and in cooperation with one another, have carried out and put into operation and effect the following acts and practices:

(a) Respondent, SBC, acts as exclusive national sales representative for respondents, MPA and United Film, in the northeastern part of the United States, comprising roughly the territory east of the State of Ohio, north of the State of Virginia, and a part of the State of Michigan, including the city of Detroit.

(b) In such territory, respondent, SBC, has the sole and exclusive right to solicit and sell national motion picture film advertising to

957

Order

all national advertisers whose home offices and whose advertising agencies are located within such territory; and respondents, MPA and United Film, have agreed not to accept any national motion picture film advertising from any source other than respondent, SBC, in that territory.

(c) Respondent, SBC, sells motion picture film advertising to such national advertisers for screening in theaters controlled by these distributors according to attendance figures or at rates of compensation listed with respondent, SBC, by the respective distributors. If, however, the distributor's attendance figures or listed rates with respect to any theater are in excess of those established by respondent GSA, in its published attendance listings or compensation ratings, respondent, SBC, is authorized to sell and does sell national advertising for such theaters at the rates or attendance figures published by respondent, GSA.

PAR. 7. Each of the respondents has acted in concert and in cooperation with one or more of the other respondents in doing and carrying out the acts and practices herein described in furtherance of the aforesaid understandings, agreements, combinations, and conspiracies.

PAR. 8. The understandings, agreements, combinations, and conspiracies entered into by respondents as set forth above, and the acts and practices engaged in and carried out by respondents pursuant thereto and in furtherance thereof as herein described, have had and now have the capacity, tendency, and effect unduly to restrain, hinder, lessen, and suppress competition in the sale, leasing, rental, and distribution of commercial motion-picture films in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the capacity and tendency to create in respondents a monopoly in the sale, leasing, rental, and distribution of such films in such commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of respondents; a stipulation of facts entered into by and between W. T. Kelley, chief counsel for the Commission, and the attorneys for all of the respondents, except Screen Broadcast Corporation and Albert E. Fair,

which provided among other things that the Commission might proceed upon the statement of facts in such stipulation, together with any testimony taken in the proceeding, 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 as to such respondents without the filing of briefs or oral argument; testimony and other evidence 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 filed by respondents, Screen Broadcast Corporation and Albert E. Fair; brief in support of the complaint and brief in opposition thereto filed on behalf of respondents, Screen Broadcast Corporation and Albert E. Fair; and oral argument by the attorney for the Commission and the attorney for respondents, Screen Broadcast Corporation and Albert E. Fair; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Association of Advertising Film Companies, an unincorporated trade association, and its officers; respondent C. J. Mabry, individually, and as secretary of said association; respondent distributors, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc., corporations, and their respective officers; and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing, renting, and distribution of commercial motion-picture films 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 planned 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 or maintaining screening or display rates to be charged national advertisers, or rates, commissions, or other amounts of compensation to be paid or allowed booking agencies.

2. Entering into contracts with motion-picture exhibitors for the exclusive privilege of exhibiting national advertising by means of commercial motion-picture films in theaters owned, controlled, or operated by such exhibitors.

3. Entering into, continuing, or carrying out any agreement with respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or any other booking or central agency, whereby:

(a) Respondent distributors agree not to accept national motion-picture-film advertising from any source other than respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or other booking or central agency, in any designated territory; or

(b) Respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or any other booking or central agency, agrees to sell motion-picture film advertising to national advertisers for screening in theaters under contract with respondent distributors according to screening or display rates cooperatively fixed and listed with respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or other booking or central agency, by the respective respondent distributors.

4. Furnishing to respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or any other booking or central agency, a list of theaters under contract with respondent distributors for classification by respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or other booking or central agency, according to size, circulation, distribution, or weekly attendance, for the purpose or with the effect of determining display rates or charges to advertisers.

5. Declining to accept or release any film for a national advertising account unless such film is booked and released through respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or some other designated booking or central agency.

6. Observing any rate card or similar device issued by respondent, General Screen Advertising, Inc., or any other booking or central agency, for computing the screening or display rate or the amount of compensation due each distributor or theater.

7. Adopting, promulgating, or putting into effect standard rates of compensation for use in dealing with national advertisers in connection with cooperative advertising programs.

8. Adopting or observing in dealings with advertisers or theaters, rate books, or similar devices issued by respondent association or any other association, or by any booking or central agency.

It is further ordered, That respondent, Screen Broadcast Corporation, a corporation, and its officers; respondent, Albert E. Fair, individually, and as president of said corporation; respondent, General Screen Advertising, Inc., a corporation, and its officers; respondent, J. D. Alexander, individually, and as chairman of the board of direc-

Order

36 F. T. C.

tors of General Screen Advertising, Inc.; respondent distributors, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc., corporations, and their respective officers; and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing, renting, and distribution of commercial motion-picture films 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 planned 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:

Entering into, continuing, or carrying out any agreement whereby:

(a) Respondent distributors or any of them agree not to accept any national motion-picture film advertising from any source other than respondent, General Screen Advertising, Inc., or respondent, Screen Broadcast Corporation, or any individual or booking agency, in any designated territory; or

(b) Respondents, General Screen Advertising, Inc., Screen Broadcast Corporation, Albert E. Fair and J. D. Alexander, or any of them, agree to sell motion-picture film advertising for national advertisers for screening in theaters under contract with respondent distributors according to screening or display charges or rates of compensation cooperatively fixed or determined by respondent distributors or any two or more of them.

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

Syllabus

IN THE MATTER OF

VICTOR KLEIN, TRADING AS UNITED ART STUDIOS; AND
BENJAMIN KADET AND ADA KADET, TRADING AS
KADET ART & FRAME COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4924. Complaint, Mar. 4, 1943—Decision, June 25, 1943*

A painting is an original representation of a design, image, or object on a surface by means of paints, water color or oil, without the intervention of any mechanical means, such as a camera; a water color being a painting with pigments for which water, and not oil, is used as a solvent, while an oil painting is done by hand with brushes in plastic oil colors on canvas or similar fabric, without the aid of photography.

Where one V. K., an individual engaged in the competitive interstate sale and distribution of tinted or colored enlargements of photographs and snapshots, and frames therefor, through house-to-house salesmen whom he equipped with attractive samples of colored enlargements represented by them to prospects as having been done by "United Art Studios," trade name employed by said V. K.—

- (a) Represented and referred to said samples and enlargements in such house-to-house canvassing as "paintings," "oil paintings," "hand painted," and "oil paintings on canvas," and in order or contract form furnished to his said salesmen and displaying trade name "United Art Studio," set forth that such "certificate" entitled "the holder to ONE Octagon Portrait Painting * * * Convex—at cost of production, \$2.95, unframed for the purpose of advertising the moderne portraiture and extending our business"; and, after advising customer that "the cost of production must be completely furnished" when proof was shown him at his residence, stated that "we only ask that you appreciate this beautiful painting and be kind enough to display it and recommend it at its value and not the amount you expended for it";
- (b) Represented to prospective customers that such was a "special introductory offer" made only to a "selected few" or "limited number" in a given locality, and a "special advertising offer" to introduce his products in that community;
- (c) Represented that said "paintings on canvas" were of the value of \$30.00 but would be made for only \$2.95, which represented merely the cost of production, no charge being made for the "artist's" time; that said "United Art Studio" was a company of high standing and exceptional financial rating which conducted a large art school, and had to provide work for its art pupils; that its profit was realized from the tuition paid by said art students, and that accordingly it would sell said beautiful paintings for only \$2.95;
- (d) Failed to call attention of customer in first contact to the peculiar convex form, shape, and size of the finished picture, or to mention the fact that, by reason thereof, a frame could not be secured readily, if at all, except from said individual at his prices; and, through the second agent or "field artist" who appeared with the uncolored rough proof of the enlarged photograph and collected the amount charged therefor, sought to sell a frame which cost him from \$1.00 to \$4.00, for amounts ranging as high as \$15.00, setting forth, in the event of the customer's objection or refusal, that the picture would be of no value if not framed, and that unless frame was bought, the picture ordered

could not be delivered; and in event of continued refusal of customer to buy frame and his election to have picture finished for sum agreed upon and paid, deferred sale of frame until a third sales agent delivered the finished picture, framed, and repeated reasons why frame must be bought; and

- (e) Among other coercive practices by which sales for frames were accomplished, threatened to retain the original photograph submitted or the completed picture, or both, until the customer purchased the frame;

The facts being that said so-called "paintings," "oil paintings," etc., were cheap photographic enlargements costing about 95¢ each, tinted or colored by mechanical air brush; prices and offers were not "special" or "introductory" or "cost of production," but were his regular prices; products were inferior in quality, workmanship, and appearance to samples submitted; said individual did not conduct an "art studio" or have in his employ or under his control any "artists" or other persons skilled in photographic technique, use of air or paint brush or color work; and the purpose of the activities and representations involved was to sell cheap frames at excessive prices;

- (f) Represented, in some instances, that a "drawing contest" would be held to decide who should be one of the few lucky persons in a given community to have "paintings" placed in their homes in connection with a "special advertising offer" or "special introductory offer"; and that in a number of sealed envelopes produced by said salesman, among largely blank slips were a few certificates entitling holder to a genuine \$30.00 handpainted portrait for the sum of \$2.95, and thereby induced them to contract for one or more paintings; when in fact an acceptable customer invariably drew, through salesman's manipulation, such a certificate, and no advantage whatever was secured by him; and

Where one B. K., engaged (with his wife) in tinting and framing photographs, and in filling orders for pictures and frames sold by aforesaid V. K. and his salesmen—

- (g) Permitted latter to use as his home office address, his own Pittsburgh address, employed by said V. K. in connection with the sale of his products, and printed on order blanks, contract forms, so-called advertising certificates, letterheads, receipt books and other forms containing name of said "United Art Studios"; and in pursuance of their arrangement, forwarded to V. K. the latter's business mail and deposited his answers in the Pittsburgh post office so as to show its stamp, thereby indicating to customers that letters to them had been mailed from "United Art Studios" at the Pittsburgh address;

With intent and effect of misleading customers and prospective customers into the belief that they were contracting and dealing with an established, operating and responsible studio, and of causing them to purchase V. K.'s pictures and frames in substantial numbers 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 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. Arthur D. Gatz, of Pittsburgh, Pa., for Benjamin Kadet and Ada Kadet.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Victor Klein, trading as United Art Studios, and Benjamin Kadet and his wife Ada Kadet, trading as Kadet Art & Frame Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Victor Klein, is an individual, trading as United Art Studios, with numerous temporary places of business, the last known being located at 1615 G Street, SE., Washington, D. C. A former post office address was 929 Fifth Avenue, Pittsburgh, Pa., as hereinafter more fully shown.

Respondents, Benjamin Kadet and Ada Kadet, are individuals, trading as Kadet Art & Frame Co., with their place of business located at 909 Fifth Avenue (formerly at 929 Fifth Avenue), Pittsburgh, Pa., as hereinafter more fully related.

PAR. 2. Respondent, Klein, is now, and for more than 3 years last past has been, engaged in the sale and distribution of tinted or colored enlargements of photographs and snapshots and of frames therefor. Respondent causes, and at all times mentioned herein has caused, said products, when sold, to be transported from the State of Pennsylvania, or other points of origin, to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business respondent, Klein, has been and is 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 of photographs and snapshots and of frames therefor.

PAR. 4. Respondent, Klein, on the one hand, and respondents, Kadet, on the other hand, in connection with the conduct of the said business of respondent, Klein, for more than 3 years last past, have entered into and carried out agreements and arrangements with each other for the use of false, misleading, and deceptive acts, methods, and practices, to induce the purchase of respondent, Klein's, said products, as hereinafter alleged.

Complaint

36 F. T. C.

PAR. 5. Respondent Klein, trading as United Art Studios, and operating from the address 929 Fifth Avenue, Pittsburgh, Pa., as aforesaid, and from other addresses to the Commission unknown, in effecting the sale of said tinted and colored enlargements of photographs or snapshots and the frames therefor, operates and has operated in substance as follows:

House-to-house salesmen, representing respondent Klein, equipped with attractive samples of colored enlargements, represented by said salesmen to have been done by United Art Studios, contact members of the purchasing public, generally at their respective homes. Said samples and enlargements which they are offering for sale are variously represented by said salesmen or canvassers to be "paintings," "oil paintings," "hand painted" and as "oil paintings on canvas." Prospective customers are told that the offer being made them is a "special introductory offer" made only to a "selected few," or "limited number" in a given locality; that the offer is a "special advertising offer" to introduce respondent's products in that community, that said paintings on canvas are of the value of \$30 but will be made for only \$2.95; that such latter sum represents merely the cost of production; that no charge is made for the "artist's" time. It is explained to the customer in this connection that United Art Studios conducts a large art school in Pittsburgh, Pa., and has to provide work for its art pupils; that the real source of profit to the studios from the operation of the school is realized from the tuition paid by said art students. In corroboration of this particular representation, the salesmen exhibit a photograph of a classroom showing numerous girls sitting at easels in the act of painting pictures. It is further represented in such connection that it is necessary to obtain material for these pupils to paint and that for this reason United Art Studios would sell these beautiful paintings for only \$2.95. Salesmen exhibit credentials showing that they are the duly accredited sales representatives of "United Art Studios" of Pittsburgh, Pa., which it is represented is a company of high standing, of exceptional financial rating. Customers so contacted accept said representations as true and deal with said United Art Studios on that basis.

Orders for "paintings" are and have been taken by respondent Klein's said sales representatives and agents on contract form furnished by him, designated "advertising certificate," of which the following is typical:

977

Complaint

UNITED ART STUDIO

Registered Under State Laws of Pennsylvania

929 FIFTH AVENUE

PITTSBURGH, PA.

ADVERTISING CERTIFICATE

This Certificate entitles the holder to ONE Octagon Portrait Painting 10 x 16 inches in size—Convexed—at cost of production, \$2.95, unframed for the purpose of advertising the moderne portraiture and extending our business.

You will be notified when the proof of your portrait will be shown at your residence, when the cost of production must be completely furnished.

We only ask that you appreciate this beautiful painting and be kind enough to display it and recommend it at its value and not the amount you expended for it.

Regroups \$1.00 Extra

We Guarantee Deposit Paid the Authorized Representative. No verbal agreement other than herein stated shall be recognized.

Deposit_____

Balance_____

Date of Order_____ Authorized Representative_____

This Order Positively Cannot Be Countermanded

In making this sale of a "painting," respondent's salesmen do not call the attention of the customer to the fact that, when finished, the painting will be of unusual shape, namely octagonal, nor that it will have a convex surface. No mention of a frame is made by the salesman first contacting the prospective customer.

A second sales agent, sometimes designated a "field 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 \$2.95, or any balance remaining, and endeavors to sell the customer a frame for the picture. The matter of the sale of a frame is here mentioned for the first time. The frame not having been mentioned by the first sales agent, many customers assume, and have assumed, at the outset that the frame would be included in the price quoted by the first sales agent. If the customer objects to or refuses to purchase a frame on account of price, quality, or design, he is informed by the sales agent that a frame for the picture cannot be purchased from any source other than United Art Studios; that the studios manufacture 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; that a "hand painted picture on canvas" should by all means be framed while wet, otherwise the picture will be ruined; that unless a frame is bought the picture ordered cannot be delivered. Cheap frames costing not more than \$1.10 are and have been priced by respondent's salesmen to customers for as much as \$16.

Complaint

30 F. T. C.

From time to time the attention of the customer is called to the customer's agreement to display and recommend the "painting." In the event the customer refuses to buy the frame from the second sales agent or "field 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. In many instances, this sales agent presents the picture to the purchaser in a frame, whereupon the above described reasons why a frame must be bought from respondent will be stated or repeated, as the case may be. In the event the customer finally refuses to buy a frame, respondent, Klein's, 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.

Sales agents of respondent, Klein, in some instances represent that a drawing contest will be held for the purpose of deciding who shall be one of the few "lucky" persons in a given community to have respondent place "paintings" in their homes in connection with a "special advertising offer" or "special introductory offer." They produce a number of sealed envelopes containing slips of paper. It is represented that most of said slips are blank but that a few are trade checks, certificates or coupons, and entitle the holder thereof to a genuine \$30 hand-painted portrait for the sum of \$2.95. Envelopes containing said slips are so manipulated by the salesmen that acceptable customers invariably draw a so-called "lucky" coupon or certificate. The customer is thereupon assured that he has been very fortunate in drawing a certificate entitling him to take advantage of respondent's special introductory offer and is thereby induced to execute a contract for one or more "paintings" at what are represented to be greatly reduced prices.

When an order has been received by respondent, Klein, it is turned over to respondents, Kadet, or some other person or concern, for execution for a consideration agreed upon.

PAR. 6. In truth and in fact, the various statements and representations made and used by respondent, Klein, and his said sales agents, in offering for sale and sale of tinted or colored enlargements and frames therefor, were and are false, deceptive, and misleading in the following, among other particulars:

(a) The so-called "paintings," "oil paintings," "oil paintings on canvas," and "hand-painted" products are not such as said designations indicate, but are merely cheap, quickly made photographic enlargements costing approximately 95¢ each, which are tinted or col-

ored by the use of pastel or crayon, water color, or other powdered pigments sprayed on the enlargement, largely through the use of a mechanical air brush and compressed air.

A painting is an original representation of a design, image, or object on a surface by means of paints, water color or oil, 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 done by hand with brushes in plastic oil colors on canvas or similar fabric, without the aid of photography.

(b) The prices at which said so-called paintings are sold by respondent are not special introductory prices and they are not offered nor sold to a selected few or limited number in any given locality or place, and are not sold at the cost of production or without charge being made "for the artist's time." On the contrary, said so-called paintings will be sold to anyone at the quoted price, and the so-called special price is the regular and customary price for which they are usually and customarily sold by respondent, Klein. They have never been sold by him for, and have never had a sales value of, \$30, nor any value or price approximating such figure.

(c) The so-called paintings sold and distributed by respondent, Klein, are different from and inferior in quality, workmanship, and appearance to the samples exhibited by the sales agents in obtaining orders. Said products, in fact, are merely cheap enlargements, reproduced on cardboard, and tinted or colored with a coloring substance that is easily wiped off.

(d) Respondent's activities and representations in securing contracts for his alleged paintings or hand-painted products are in fact employed to enable him to contact the purchaser in order to obtain the opportunity of selling frames of cheap and inferior quality at prices which are in excess of the prices at which said frames usually and customarily sell in the ordinary course of business. Frames costing \$1 or less are and have been sold by respondent Klein for as much as \$16, all of which facts he conceals from customers and prospective customers.

(e) Respondent, Klein, conceals and has concealed from purchasers at the time a "painting" is ordered the fact that the finished product will be delivered in a peculiar convex form, shape, and size, and that it will be impossible for the customer to obtain a frame to suit the "painting" except from respondent at prices fixed by him.

(f) The so-called "lucky" certificates, tickets, or coupons drawn by the customer upon the representation that he is thus obtaining an

Complaint

36 F. T. C.

expensive hand painting at a great saving, induce him to believe that he has thereby obtained a distinct advantage in price, and influence him to enter into a contract, when, as a matter of fact, such certificate gives no advantage in price and all prospective purchasers who appear to be satisfactory financial risks are permitted to make the "lucky" draw and obtain such certificate.

(g) Respondent, Klein's, sales of frames are from time to time accomplished by coercive and oppressive acts, practices, and representations, among which are retention of the original photographs submitted by the customer or the completed picture, or both, until a frame is purchased by the customer. Purchasers do not understand, and there is no agreement in connection with said contracts, that photographs submitted by them are to be retained by respondent, Klein, until payment of any sum alleged by him to be due. In truth, purchasers are given the impression that their photographs which have been loaned to the respondent will be returned at the time the finished product is delivered, regardless of whether or not such product is purchased.

PAR. 7. Respondents, Benjamin Kadet and Ada Kadet, trading as Kadet Art & Frame Co., now operate, and for several years last past have operated, in the city of Pittsburgh, Pa., a place of business for the making and sale of enlarged and tinted or colored photographs. Pursuant to the arrangement with respondents Kadet, referred to in paragraph 4 of this complaint, respondent, Klein, has been permitted by them to use, and he has used, as his home office address the Pittsburgh office and business address of respondents, Kadet, to wit, 929 Fifth Avenue, Pittsburgh, Pa., and has printed and employed, in connection with the sale of his products, as aforesaid, order blanks, contract forms, so-called advertising certificates, letterheads, receipt books and other forms containing the name and address "United Art Studios, 929 Fifth Avenue, Pittsburgh, Pa."

In further execution of said arrangement, the practice is and has been that, when respondent, Klein, was not in Pittsburgh, respondents, Kadet, would forward all his business mail to him wherever he might be, for attention and answer. Respondent, Klein, would then answer the correspondence on letterheads containing the above name and address and send such mail in bulk to respondents, Kadet, who would deposit same in the post office at Pittsburgh. Said letters would then show the Pittsburgh post office cancelation mark and indicate to the customer that the letter had been mailed from "United Art Studios" there. At times, other Pittsburgh addresses of respondents, Kadet, would be used, such as 909 Fifth Avenue and 605 Washington Trust Building.

PAR. 8. In truth and in fact, the so-called United Art Studios was and is merely a trade name assumed and used by respondent, Klein, for the conduct of his aforesaid business. Respondent, Klein, has not owned, operated, or conducted, and does not now own, operate, or conduct an art studio, institute of art, or other place of business, in Pittsburgh or elsewhere, where tinted or colored enlargements of photographs are made, and he does not own, operate, or control nor has he owned, operated, or controlled, the photographic and other equipment essential to the production of enlargements. Neither has respondent, Klein, had in his employ or under his control and direction any artists, operators or persons skilled in photographic technique or in the use of the air brush or paint brush, or skilled in doing the necessary color work.

PAR. 9. The use by respondent, Klein, of the aforesaid trade name, United Art Studios, and of the Pittsburgh address, and the appearance of said name and address on contract and other forms used and exhibited by his sales agents and seen by customers and prospective customers, and the posting at Pittsburgh by respondents, Kadet, of mail moving from respondent, Klein, to customers and prospective customers, as hereinabove alleged, has had and has the purpose and capacity and tendency to lead customers and prospective customers to believe, and they have been led to believe, that they were and are contracting and dealing with an established, operating and responsible studio, and that the pictures respondent, Klein, sells are high-grade painted portraits and that the picture frames are of exceptional value, and to cause the public to purchase respondent's pictures and frames in substantial numbers because of such belief.

PAR. 10. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondent Klein'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 4th day of March, A. D. 1943, issued and served its complaint in this proceeding upon the respondents, Victor Klein, trading as United Art Studios, and Benjamin Kadet and Ada Kadet, trading as Kadet Art & Frame Co., charging respondents with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 12, 1943, the respondents, Benjamin Kadet

and Ada Kadet, as individuals, filed answers in this proceeding. Thereafter stipulations were entered into with the respondents, Victor Klein, trading as United Art Studios, and Benjamin Kadet, trading as Kadet Art & Frame Co., and Ada Kadet, an individual, whereby it was stipulated and agreed that statements of facts signed by said respondents and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said 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 presentation of argument or the filing of briefs, said respondents expressly waiving the filing of report upon the evidence by the trial examiner.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulations, said stipulations 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, Victor Klein, is an individual, trading as United Art Studios, with numerous temporary places of business, the last one being located at 1615 G Street SE., Washington, D. C. A former post office address of this respondent was 929 Fifth Avenue, Pittsburgh, Pa.

Respondent, Benjamin Kadet, is an individual, trading as Kadet Art & Frame Co., with his principal office and place of business located at 909 Fifth Avenue, Pittsburgh, Pa. A former address of this respondent was located at 929 Fifth Avenue, Pittsburgh, Pa.

Respondent, Ada Kadet, is the wife of the respondent, Benjamin Kadet, and is now, and has been, employed by her husband as an assistant in the management and operation of the business of the Kadet Art & Frame Co. In this capacity she has and does perform an active part in the affairs of said business with her husband and, in his absence, has active charge and management of same.

PAR. 2. Respondent, Victor Klein, is now, and for more than 3 years last past has been, engaged in the sale and distribution of tinted or colored enlargements of photographs and snapshots and of frames

therefor. Respondent causes, and at all times mentioned herein has caused, said products, when sold, to be transported from the State of Pennsylvania or other points of origin to the purchasers thereof located in various other States of the United States other than Pennsylvania or other than the State where such shipments originate, and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, the respondent, Victor Klein, has been and is 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 of photographs and snapshots and of frames therefor.

PAR. 4. Respondent, Benjamin Kadet, trading as Kadet Art & Frame Co., now operates and for several years last past has operated in the City of Pittsburgh a place of business for tinting and framing photographs and in the sale of picture frames. Some of this respondent's customers are itinerant salesmen who sell respondent's pictures and picture frames. Among such customers who sell said products by house-to-house canvassing is the respondent, Victor Klein.

PAR. 5. Respondent, Victor Klein, trading as United Art Studios and operating from the address known as 929 Fifth Avenue, Pittsburgh, Pa., as aforesaid, and from other addresses to the Commission unknown, in effecting the sale of said tinted and colored enlargements of photographs and snapshots and the frames, therefor, operates and has operated in substance as follows:

House-to-house salesmen, representing respondent, Klein, equipped with attractive samples of colored enlargements, represented by said salesmen to have been done by United Art Studios, contact members of the purchasing public, generally at their respective homes. Said samples and enlargements which they are offering for sale are variously represented by said salesmen or canvassers to be "paintings," "oil paintings," "hand painted," and as "oil paintings on canvas." Prospective customers are told that the offer being made them is a "special introductory offer" made only to a "selected few," or "limited number" in a given locality; that the offer is a "special advertising offer" to introduce respondent's products in that community, that said paintings on canvas are of the value of \$30, but will be made for only \$2.95; that such latter sum represents merely the cost of production; that no charge is made for the "artist's" time. It is explained to the customers in this connection that United Art Studios conducts a large art school in Pittsburgh, Pa., and has to provide work for its art pupils; that the real source of profit to the Studios from the operation

of the school is realized from the tuition paid by said art students. In corroboration of this particular representation, the salesmen exhibit a photograph of a classroom showing numerous girls sitting at easels in the act of painting pictures. It is further represented in such connection that it is necessary to obtain material for these pupils to paint and that for this reason United Art Studios would sell these beautiful paintings for only \$2.95. Salesmen exhibit credentials showing that they are the duly accredited sales representatives of "United Art Studios" of Pittsburgh, Pa., which it is represented, is a company of high standing, of exceptional financial rating. Customers so contacted accept said representations as true and deal with said United Art Studios on that basis.

Orders for "paintings" are and have been taken by respondent, Victor Klein's, said sales representatives and agents on contract form furnished by him, designated "advertising certificate" of which the following is typical:

UNITED ART STUDIO

Registered under State Laws of Pennsylvania

129 FIFTH AVENUE

PITTSBURGH, PA.

ADVERTISING CERTIFICATE

This Certificate entitles the holder to ONE Octagon Portrait Painting 10 x 10 inches in size—Convexed—at cost of production, \$2.95, unframed for the purpose of advertising the moderne portraiture and extending our business.

You will be notified when the proof of your portrait will be shown at your residence, when the cost of production must be completely furnished. We only ask that you appreciate this beautiful painting and be kind enough to display it and recommend it at its value and not the amount you expended for it.

Regroups \$1.00 Extra

We guarantee Deposit Paid the Authorized Representative. No verbal agreement other than herein stated shall be recognized.

Deposit.....
Balance.....

Date of Order _____ Authorized Representative _____

This Order Positively Cannot Be Countermanded

The respondent's pictures, when finished, are octagonal shaped, with a convex form. In making the sale of these pictures, respondent's salesmen do not call the attention of the customer to the unusual shape of the finished pictures. No mention of a frame is made by the salesman first contacting the prospective customer.

A second sales agent, sometimes designated a "field artist," later appears with an uncolored rough proof or "sketch" of the enlarged photograph. This sales agent collects for the cost of the colored en-

largement, usually the sum of \$2.95, or any balance remaining, and endeavors to sell the customer a frame for the picture. The matter of the sale of a frame is here mentioned for the first time. The frame not having been mentioned by the first sales agent, many customers assume, and have assumed, at the outset that the frame would be included in the price quoted by the first sales agent. If the customer objects to, or refuses to purchase, a frame on account of price, quality, or design, he is informed by the sales agent that a frame for the picture cannot be purchased from any source other than United Art Studios; that the Studio 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; that a "hand painted picture on canvas" should by all means be framed while wet, otherwise the picture will be ruined; that unless a frame is bought the picture ordered cannot be delivered.

Frames costing the respondent, Victor Klein, from \$1 to \$4 have been priced by respondent's salesmen to customers for as much as \$15.90.

From time to time the attention of the customer is called to the customer's agreement to display and recommend the "painting." In the event the customer refuses to buy the frame from the second sales agent or "field 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. In many instances, this sales agent presents the picture to the purchaser in a frame, whereupon the above described reasons why a frame must be bought from respondent will be stated or repeated, as the case may be.

Sales agents of respondent, Victor Klein, in some instances have represented that a drawing contest will be held for the purpose of deciding who shall be one of the few "lucky" persons in a given community to have respondent place "paintings" in their homes in connection with a "special advertising offer" or "special introductory offer." They produce a number of sealed envelopes containing slips of paper. It is represented that most of said slips are blank but that a few are trade checks, certificates, or coupons, and entitle the holder thereof to a genuine \$30 hand-painted portrait for the sum of \$2.95. Envelopes containing said slips are so manipulated by the salesman that acceptable customers invariably draw a so-called "lucky" coupon or certificate. The customer is thereupon assured that he has been very fortunate in drawing a certificate entitling him to take advantage of respondent's special introductory offer and is thereby induced to execute a contract for one or more "paintings" at what are represented to be greatly reduced prices. The drawing contest referred to is not currently being used by the respondent, Victor Klein. Said respondent

ent discontinued such practice prior to the issuance of the complaint but subsequent to the institution of the investigation by the Commission in this matter.

When an order has been received by respondent, Victor Klein, it is turned over to respondents, Benjamin Kadet and Ada Kadet, or some other person or concern, for execution for a consideration agreed upon.

PAR. 6. In truth and in fact, the various statements and representations made and used by respondent, Victor Klein, and his said sales agents, in offering for sale and sale of tinted or colored enlargements and frames therefor, were and are deceptive and misleading in the following, among other particulars:

(a) The so-called "paintings," "oil paintings," "oil paintings on canvas," and "hand painted" products are not such as said designations indicate, but are merely cheap, quickly made photographic enlargements costing approximately 95¢ each, which are tinted or colored by the use of pastel or crayon, water color, or other powdered pigments sprayed on the enlargement, largely through the use of a mechanical air brush and compressed air.

A painting is an original representation of a design, image, or object on a surface by means of paints, water color or oil, 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 done by hand with brushes in plastic oil colors on canvas or similar fabric, without the aid of photography.

(b) The prices at which said so-called paintings are sold by respondent are not special introductory prices and they are not offered nor sold to a selected few or limited number in any given locality or place, and are not sold at the cost of production, or without charge being made "for the artist's time." On the contrary, said so-called paintings will be sold to anyone at the quoted price, and the so-called special price is the regular and customary price for which they are usually and customarily sold by respondent, Victor Klein. They have never been sold by him for, and have never had a sales value of, \$30, nor any value or price approximating such figure.

(c) The so-called paintings sold and distributed by respondent, Victor Klein, are different from and inferior in quality, workmanship, and appearance to the samples exhibited by the sales agents in obtaining orders. Said products, in fact, are merely cheap enlargements, reproduced on cardboard, and tinted or colored with a coloring substance that is easily wiped off.

(d) Respondent's activities and representations in securing contracts for his alleged paintings or hand-painted products are in fact

employed to enable him to contact the purchaser in order to obtain the opportunity of selling frames of cheap and inferior quality at prices which are in excess of the prices at which said frames usually and customarily sell in the ordinary course of business. Frames costing \$1 or less are and have been sold by respondent, Victor Klein, for as much as \$16, all of which facts he conceals from customers and prospective customers.

(e) Respondent, Victor Klein's salesmen have failed to explain to purchasers at the time a "painting" is ordered the fact that the finished product will be delivered in a peculiar convex form, shape, and size, and that it will be difficult or impossible for the customer to obtain a frame to suit the "painting" except from respondent at prices fixed by him.

(f) The so-called "lucky" certificates, tickets, or coupons drawn by the customer upon the representation that he is thus obtaining an expensive hand painting at a great saving, induce him to believe that he has thereby obtained a distinct advantage in price, and influence him to enter into a contract, when, as a matter of fact, such certificate gives no advantage in price and all prospective purchasers who appear to be satisfactory financial risks are permitted to make the "lucky" draw and obtain such certificate.

(g) Respondent, Victor Klein's, sales of frames are from time to time accomplished by coercive and oppressive acts, practices, and representations, among which are threats to retain the original photographs submitted by the customer or the completed picture, or both, until a frame is purchased by the customer. Purchasers do not understand, and there is no agreement in connection with said contracts, that photographs submitted by them are to be retained by respondent, Victor Klein, until payment of any sum alleged by him to be due. In truth, purchasers are given the impression that their photographs which have been loaned to the respondent will be returned at the time the finished product is delivered, regardless of whether or not such product is purchased.

PAR. 7. In the course and conduct of his said business the respondent, Benjamin Kadet, has permitted the respondent, Victor Klein, to use, and the respondent, Victor Klein, has used, as his home office address, the Pitt-burgh, Pa., office and business address of the respondent, Benjamin Kadet, to wit, 929 Fifth Avenue, Pittsburgh, Pa. The respondent, Victor Klein, has printed and employed in connection with the sale of his products, order blanks, contract forms, so-called advertising certificates, letterheads, receipt books, and other forms containing the name and address of "United Art Studios, 929 Fifth Avenue, Pittsburgh, Pennsylvania."

The respondent, Benjamin Kadet, trading as Kadet Art & Frame Co., in connection with his dealings with the respondent, Victor Klein, has filled orders for tinted pictures and picture frames sold by the respondent, Victor Klein, and by salesmen working under him. Upon receipt of such orders, the respondents, Benjamin Kadet and Ada Kadet, perform the necessary tinting service and place the pictures when tinted in frames specified by the order. Respondents, Benjamin Kadet and Ada Kadet, cause such pictures to be delivered to the respondent, Victor Klein, by mail or express to the designated places of shipment located in various States of the United States other than the State of Pennsylvania and in the District of Columbia. Payment for the services performed by the respondents, Benjamin Kadet and Ada Kadet, and for the frames so sold to the respondent, Victor Klein, is made after delivery on open account. Respondents, Benjamin Kadet and Ada Kadet, in pursuance of their arrangement with the respondent, Victor Klein, have forwarded his business mail to him wherever he might be for attention and answer. Respondent, Victor Klein, would then answer the correspondence on letterheads mailed in envelopes containing the address of the respondents, Benjamin Kadet and Ada Kadet, who then deposit same in the post office at Pittsburgh, Pa. Said letters would then show the Pittsburgh post office cancelation mark and indicate to the customer that the letter had been mailed from "United Art Studios" there. At times other Pittsburgh addresses of the respondents, Benjamin Kadet and Ada Kadet, would be used, such as 909 Fifth Avenue and 608 Washington Trust Building.

PAR. 8. The Commission finds that the so-called United Art Studios was and is merely a trade name assumed and used by the respondent, Victor Klein, for the conduct of his aforesaid business. Respondent, Victor Klein, during the times complained of, has not owned, operated, or conducted, and does not now own, operate, or conduct an art studio, institute of art, or other place of business, in Pittsburgh or elsewhere, where tinted or colored enlargements of photographs are made, and he does not own, operate, or control, nor has he owned, operated, or controlled, the photographic and other equipment essential to the production of enlargements. Neither has the respondent, Victor Klein, had in his employ or under his control and direction any artists, operators, or other persons skilled in photographic technique or in the use of the air brush or paint brush, or skilled in doing the necessary color work. The tinted and colored work done for the respondent, Victor Klein, at the address of the respondents, Benjamin Kadet and Ada Kadet, was performed by the respondents, Benjamin Kadet and Ada Kadet, and by employees under their direction and control.

977

Order

PAR. 9. The use by the respondent, Victor Klein, of the aforesaid trade name, United Art Studios, and of the Pittsburgh address of the respondent, Benjamin Kadet and Ada Kadet, and the appearance of said name and address on contracts and other forms used and exhibited by sales agents and seen by customers and prospective customers, and the posting at Pittsburgh by the respondents, Benjamin Kadet and Ada Kadet, of mail moving from the respondent, Victor Klein, to customers and prospective customers, have had and have the purpose and capacity and tendency to lead customers and prospective customers to believe, and they have been led to believe, that they were and are contracting and dealing with an established, operating, and responsible studio, and to cause the public to purchase respondent, Victor Klein's, pictures and frames in substantial numbers because of such belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, Benjamin Kadet and Ada Kadet, and stipulations as to the facts entered into between the respondent, Victor Klein, trading as United Art Studios and the respondent, Benjamin Kadet, trading as Kadet Art & Frame Co., and the respondent, Ada Kadet, an individual, and Richard P. Whiteley, assistant chief counsel for the Commission, which provide, among other things, that without other evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Victor Klein, trading as United Art Studios, or doing business under any other name or style, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale and 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 of photographs and snapshots and of frames therefor, do forthwith cease and desist from:

(a) Representing, directly or in any manner, that colored or tinted photographs or colored or tinted photographic enlargements are hand-painted or are paintings.

(b) Using the terms "paintings," "hand-painted," "oil paintings on canvas," or the word "painting," either alone or in conjunction with any other words or terms in any way to designate, describe, or refer to tinted or colored pictures, photographs, or photographic enlargements, or for pictures produced from a photographic base or impression.

(c) Representing that pictures being sold in the regular course of business at the usual and customary prices therefor are or will be sold only to a limited number of customers, or as a "special introductory offer" or "special advertising offer" to a "selected few;" or representing in any manner that a purchaser is receiving an advantage in price or other consideration not ordinarily available.

(d) Representing that any specified sum in excess of the actual cost of production is merely the "cost of production."

(e) Representing that the picture to be made and delivered will be a reproduction or duplicate 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.

(f) 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.

(g) 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 respondent at prices fixed by him.

(h) Using a "draw," "draw contest," or so-called "lucky" blanks, trade checks, certificates, or coupons, 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.

(i) Failing or refusing, in cases where a picture ordered has been completed and paid for, to deliver to the customer the completed picture or the original photograph or snapshot previously loaned by the customer for use in producing the picture.

(j) Using the trade name "Art Studios" or any other fictitious name of similar import unless the respondent actually owns, operates, conducts, or controls an organization or establishment of the character indicated and comprehended by the trade name so used; and from representing that respondent maintains or conducts a school of art where students are given instruction in art unless and until respondent has in his employ or under his control or direction artists operators or other persons skilled or acquiring skill in photographic technique or in the use of the air brush or paint brush, and in doing color work essential in the production of tinted or colored enlargements of photographs and snapshots.

It is further ordered, That the respondents, Benjamin Kadet, individually, and trading as Kadet Art & Frame Co., or doing business under any other trade name or style, and the respondent, Ada Kadet, an individual, their representatives, salesmen, 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 tinted or colored photographs and snapshots and frames therefor, do forthwith cease and desist from:

Representing or authorizing or cooperating in the representation that the business address of said respondents is that of the respondent, Victor Klein or, in anywise, cooperating with said respondent, Victor Klein, in misrepresenting the nature, character or extent of the business conducted by him.

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.

Complaint

36 F. T. C.

IN THE MATTER OF
EMPIRE PEAT SOIL SPONGE COMPANY

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

Docket 4641. Complaint, Nov. 24, 1941—Decision, June 28, 1943

Where an individual engaged in the mining and the interstate sale and distribution of peat to wholesalers and retailers, and also directly to agricultural purchasers such as nurserymen, florists, farmers, and poultrymen—

Used designation "peat moss" in referring to his said product in newspapers, trade publications and advertising circulars, and featured the name on the boxes or crates in which it was shipped;

When in fact his said peat was not the preferred "moss peat"—derived from Sphagnum moss and found in cool northern regions with relatively high rainfall and fogs of long duration, with its higher absorptive capacity and acidity, its very low ash content and germicidal properties, and its availability for uses for which the other type could not be employed—but was a mixture of sedge and Hypnum peats;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, who understand the term "peat moss" to indicate the preferred moss peat derived from Sphagnum moss, with respect to the character and properties of said product, 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.

Before *Mr. Andrew B. Duval*, trial examiner.

Mr. James I. Rooney and *Mr. Randolph W. Branch* for the Commission.

Cutler & Males, 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 Gaetano Rossitto, hereinafter referred to as respondent, has violated the provisions of the said act, and its appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Gaetano Rossitto, is an individual doing business under the trade name, Empire Peat Soil Sponge Co., with his principal office and place of business located at 2 Lafayette Street, New York, N. Y.

PAR. 2. Said respondent is now and for more than one year last past has been engaged in the mining, and in the sale and distribution of

commercial peat to wholesalers and retailers for resale, and directly to those engaged in the agricultural industry, such as nurserymen, florists, farmers and poultrymen. Respondent causes said product, when sold, to be shipped from his place of business in Goshen, N. Y., to the purchasers thereof, who are located at points in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said commercial peat 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 product respondent has falsely represented, by various means, such as pamphlets, newspapers and trade publications circulated generally among the purchasing public, and by means of labels on boxes in which his said product is shipped to the purchasing public, that the commercial peat sold and distributed by him is "peat moss."

PAR. 4. There are many forms and varieties of peat. Their characteristics, physical properties, and chemical compositions greatly differ. Peat moss, more correctly described as moss peat, signifies and is commonly understood by those engaged in the agricultural and kindred industries, to be a well-defined variety of peat formed predominately by the small stems and leaves of various species of Sphagnum mosses. Such variety of peat is used extensively as bedding for dairy cattle and horses; as poultry litter; as a source of humus-forming organic matter for the purpose of improving soils and as a packing material for shipping or storing perishable articles such as fruits, vegetables, tubers, bulbs, and seedlings. It possesses certain distinct properties and characteristics not found in other varieties of peat. Among such peculiar properties and characteristics are its high water-absorbing capacity, its strong acid reaction, its uniformly low mineral and nitrogen content, its capacity to prevent infection from disease organisms in plant life, and its ease in handling. Because of these characteristics and qualities moss peat is preferred by the purchasing public over other varieties of peat and commands a higher price.

PAR. 5. Respondent's product designated, described, and advertised as "peat moss" is a peat composed mainly of moderately decomposed rootlets and rhizomes derived from various sedges and the stems from species of Hypnum and is properly identified as "sedge peat." It has a relatively low water-absorbing capacity, varies in reaction from acid to alkaline, and may contain injurious soluble salts. When cultivated for crops it undergoes decomposition and is apt to harbor disease or-

Findings

36 F. T. C.

ganisms. Such variety of peat becomes brittle and powdery when dry and cannot be successfully employed for many of the uses for which moss peat is accepted.

PAR. 6. Respondent, by using the words "peat moss" in describing and identifying his product falsely represents, directly and by implication, that said product is "moss peat" and that it possesses all the beneficial qualities and characteristics of moss peat as heretofore set forth and described.

PAR. 7. The use by the respondent of the false, deceptive, and misleading designation and description of its product, designated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's product is moss peat and that said product possesses all of the qualities and characteristics of moss peat and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 24, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Gaetano Rossitto, an individual, doing business as Empire Peat Soil Sponge 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, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission before a trial examiner of the Commission theretofore duly designated by it (no testimony or other evidence being introduced in opposition to the complaint), 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, Gaetano Rossitto, is an individual, doing business under the trade name Empire Peat Soil Sponge Co., with his office and principal place of business located at 1781 Riverside Drive, New York, N. Y. Respondent is now and for some 6 years last past has been engaged in the mining of peat, and in the sale and distribution thereof to wholesale and retail dealers, and also directly to purchasers engaged in agricultural industry, such as nurserymen, florists, farmers, and poultrymen. The mine or pit from which respondent obtains his peat is located near Goshen, N. Y.

PAR. 2. Respondent causes and has caused his product, when sold, to be shipped from his mine or pit 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 has maintained a course of trade in his product in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent advertises his peat in newspapers and trade publications having a general circulation in the trade and among the purchasing public, and also by means of advertising circulars distributed among prospective purchasers. In all of his advertising, respondent refers to his product as "peat moss," and his name is prominently displayed also on the boxes or crates in which the product is packed and shipped to purchasers.

PAR. 4. There are two general classes of peat: (1) moss peat, and (2) reed, sedge, and Hypnum peats. Moss peat is derived from Sphagnum moss, and is found in cool, northern regions where the rainfall is relatively high and where fogs of long duration occur. Reed, sedge, and Hypnum peats are found principally in the more southerly, moderate temperature regions. There are pronounced differences between the two types of peat. Moss peat possesses a high capacity for absorbing water, a higher degree of acidity, and a very low ash content. It also possesses germicidal properties. Reed, sedge, and Hypnum peats, on the other hand, have a relatively low capacity for water absorption, a lower degree of acidity, and a higher ash content. They are lacking in germicidal properties, and in fact have a tendency, under certain conditions, to harbor insects and microorganisms.

Order

36 F. T. C.

There is a marked difference, also, in the uses which can be made of the two types of peat. Moss peat is the only type of peat which can be used satisfactorily for stable bedding and as a litter for poultry. Likewise, it is the only type which can be used for surgical dressings, this being due to its high degree of acidity and its germicidal properties. In the shipping or storing of such articles as vegetables, fruits, bulbs, and seedlings, moss peat is preferable because of its germicidal characteristics. Moss peat is also preferable as a mulch and as a soil conditioner because of its high absorptive capacity and high acidity.

PAR. 5. The evidence discloses that respondent's product is not moss peat but is a mixture of sedge and Hypnum peats. It further appears from the evidence that there is a marked preference on the part of users of peat for moss peat over sedge or Hypnum peat, and that such users understand the term "peat moss" as indicating that the product so designated is moss peat derived from Sphagnum moss. The Commission therefore finds that the term "peat moss," as used by respondent to designate and describe his product, is erroneous and misleading.

PAR. 6. The Commission finds further that the use by respondent of this erroneous and misleading term to designate and describe his product has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and properties of respondent's product, and the tendency and capacity to cause such members of the public to purchase 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, 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, Gaetano Rossitto, individually, and trading as Empire Peat Soil Sponge Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's peat in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "peat moss" or "moss peat," or any other words of similar import, to designate or describe any peat not derived from Sphagnum moss; or otherwise representing, directly or by implication, that any peat is moss peat when such peat is not derived from Sphagnum moss.

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.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.¹

ROBERT T. K. HEE, trading as THE EASTERN HERB Co. Complaint, September 2, 1941. Order, February 3, 1943. (Docket 4582.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results; in connection with the sale of Chinese herbs, intended as a treatment for certain diseases and disorders of the human body.

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. Karl Stecher for the Commission.

Mr. Edgar A. McNulty, of San Diego, Calif., for respondent.

D. K. TUEY. Complaint, June 16, 1942. Order, February 23, 1943. (Docket 4774.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results and comparative merits; in connection with the sale of Chinese herbs, intended as a treatment for diseases and disorders of the human body.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Before *Mr. Miles J. Furnas*, trial examiner. .

Mr. James I. Rooney for the Commission.

Mr. Patrick J. Cooney, of Los Angeles, Calif., for respondent.

¹ During the period covered by this volume, i. e., from January 1, 1943, to June 30, 1943, the Commission in the matter of Parker-McCrory Manufacturing Co., docket 4707, on March 20, 1943, made an order vacating and setting aside stipulation as to the facts entered on June 2, 1942, and findings and cease and desist order made on January 13, 1943, and on April 29, 1943, made new findings and order therein. See ante p. 587.

GENERAL ELECTRIC Co. Complaint, March 12, 1940. Order, April 21, 1943. (Docket 4059.)

Charge: Advertising falsely or misleadingly and disparaging or misrepresenting competitors or their products as to qualities, properties or results and comparative merits; in connection with the manufacture and sale of incandescent electric light bulbs.

Dismissed, after answer and trial, by the following order:

This matter having been 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. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

Mr. Clark Nichols and *Mr. Randolph W. Branch* for the Commission.

Mr. Quincy D. Baldwin, of New York City, for respondent.

SCOTT PRODUCTS Co., trading as AMERICA-CHIFFON Co. Complaint, January 14, 1942. Order, May 11, 1943. (Docket 4670.)

Charge: Advertising falsely or misleadingly as to grade, usual price, quality or value, and guarantee of product; in connection with the sale of women's hosiery.

Record closed, after answer and trial, by the following order:

This matter having been heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and it hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the case and resume trial thereof in accordance with the Commission's regular procedure.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

PACIFIC COAST PAPER MILLS, INC.² Complaint, December 9, 1941. Order, June 1, 1943. (Docket 4657.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to qualities, properties or results, competitive products, comparative merits, and own products' sponsorship, recommendation or approval by the medical profession or by physicians generally; in connection with the manufacture and sale of respondent's "M. D." toilet tissues, sanitary napkins and paper table napkins.

² Name changed to Pacific Coast Paper Mills of Washington by amendment in the record.

Dismissed, after answer and trial, by the following order: .

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission, should future facts so warrant, to institute new proceedings and resume trial thereof in accordance with its regular procedure.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Walter B. Whitcomb and *Mr. Frank B. Allyn*, of Bellingham, Wash., for respondent.

STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST²

3409.³ **Granite Monuments or Memorials—Performance Bonds.**—Montello Granite Co., engaged in the sale and distribution of granite monuments or memorials in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Montello Granite Co., in connection with the sale and distribution of its monuments or memorials in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from representing, directly or inferentially, that it issues or provides bonds for the performancy of its guaranty agreements. (May 18, 1943.)

3596. **"Weldex"—Nature and Composition.**—Lillian K. Carroll, Harold Benson, and G. Henry Hannum, copartners, trading as Universal Selling Co., engaged in the business of selling a product designated "Weldex" and intended for use as a means to repair cracks and leaks in water-cooled motors, in interstate commerce, in competition with other partnerships and with corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lillian K. Carroll, Harold Benson, and G. Henry Hannum, in connection with the sale and distribution of their products in commerce, as commerce is defined by the Federal Trade Commission Act,

¹ For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 1081 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely January 1, 1943, to June 30, 1943, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 35 of the Commission's decisions.

² In the interest of brevity there are omitted from the published digests of the published stipulations agreements under which the stipulating respondent or respondents, as the case may be, agree that, should such stipulating respondent or respondents ever resume or indulge in any of the practices, methods, or acts in question, or in event of issuance by Commission of complaint and institution of formal proceedings against respondent, as in the stipulation provided, such stipulation and agreement, if relevant, may be received in such proceedings as evidence of the prior use by the respondent or respondents of the methods, acts, or practices herein referred to.

³ Previous stipulation 3409, reported in 34 F. T. C. 1645, was rescinded.

they, and each of them agreed to cease and desist forthwith from the use of the word "Weldex" as a trade name for their said product; and from the use of the said word, or the word "weld" or of any other derivative or simulation of the word "weld" as a trade name for said product, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that said product is a weld, or that the use thereof with metals will effect a state or condition of their being or becoming welded or will cause the union, consolidation, or fusion of the metals or metal parts such as would be accomplished by a welding process. The said copartners also agreed to cease and desist from the use of the words "metal base compound" or of the word "metal" in connection with the word "compound" or in any other way, as descriptive of said product, or the effect of which tends or may tend to convey the belief or impression that the said product has a metal base; provided that if the base of said product is composed in substantial part of metal, and the word "metal" is used as descriptive of such metal base content, then in that case, the word "metal" shall be immediately accompanied by some other word or words so as to indicate clearly that the base of said product is not composed wholly of metal. (Jan. 8, 1943.)

3597. **Clocks—Source or Origin.**—Simplex Time Recorder Co., a corporation, engaged in the sale and distribution in interstate commerce of clocks including a clock designated "The Morse Tape Clock," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Simplex Time Recorder Co., in connection with the sale and distribution of clocks in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing, directly or inferentially, that each and every part of such clocks has been made in the United States when, in fact, any constituent part or parts thereof have been made or manufactured in a country or countries other than the United States of America. (Jan. 15, 1943.)

3598. **Clocks—Source or Origin.**—The Morse Magneto Clock Co., also trading as American Watchman's Time Detector Co., a corporation, engaged in the sale and distribution in interstate commerce of clocks including a clock designated "The Morse Tape Clock" in competition with other corporations and with individuals, firms, and partnerships 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 Morse Magneto Clock Co., in connection with the sale and distribution of clocks in commerce as defined by said act, agreed forthwith

to cease and desist from representing, directly or inferentially, that each and every part of such clocks has been made in the United States when, in fact, any constituent part or parts thereof have been made or manufactured in a country or countries other than the United States of America. (Jan. 15, 1943.)

3599. **Trophies—Prices.**—R. Wallace & Sons Manufacturing Co., a corporation, engaged in the business of selling merchandise, namely, trophies, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

R. Wallace & Sons Manufacturing Co., in connection with the advertisement, offering for sale, sale or distribution of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use on or in connection with its merchandise of any false, fictitious, or misleading price representation which purports to be the retail sales price thereof but which, in fact, is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade.

2. Directly or inferentially representing, through the use of a fictitious or marked-up price, that the price for which such merchandise actually is offered for sale to a prospective purchaser is an exceptional price, a low price, or a discounted price, when in fact, the sales price offered the purchaser is not an exceptional, low, or a discount price, but actually is the price for which said merchandise is customarily sold in the usual course of retail trade. (Jan. 15, 1943.)

3600. **Towels and Other Textile Products—Composition.**—Granite Textile Mills, Inc., a corporation, engaged in the manufacture of towels and/or other textile products and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Granite Textile Mills, Inc., in connection with the sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. The use of percentages or any other quantitative designations on or in labels or trade literature attached to or used in connection with its towels or other products composed in part of linen and in part of cotton or other fiber or fibers, or composed in part of rayon and in part of cotton or other fiber or fibers, as descriptive of the fiber content of

such products, unless such percentages or other quantitative designations definitely and accurately disclose or set forth the correct percentage or proportion of each constituent fiber thereof.

2. Advertising, branding, labeling, invoicing, selling, or offering for sale any product composed in part of linen and in part of other fiber or fibers without accurately designating and naming, in equally conspicuous type, each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent, such as, for example, "Cotton and Linen" for towels or other articles composed of cotton and linen, each present in substantial proportion, with cotton present in larger proportion than linen. (Jan. 22, 1943.)

3601. "Hollannaise" Sauce—Composition, Etc.—Francis H. Leggett & Co., a corporation, engaged in the sale and distribution in interstate commerce, of food products including a preparation designated "Premier Hollannaise," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Hollandaise sauce is a sauce the fatty ingredient or content of which consists wholly of butter and the fact that such fatty content consists of butter has for many years past been known to cooks, chefs, and the consuming public generally; and cook books and publications generally, containing recipes for such sauce, indicate butter as the fatty constituent thereof.

Francis H. Leggett & Co., in connection with the sale and distribution of its aforesaid food product in commerce as commerce is defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner above set forth, agreed forthwith to cease and desist from the use of the coined word "hollannaise" or other word or term connoting hollandaise, either alone or in connection with any other word or words, to designate or describe a preparation the fatty content of which does not consist wholly of butter and which is not made in accordance with the generally accepted recipe for hollandaise sauce; and from representing, directly or inferentially, that the combining of such preparation with any other ingredient or ingredients will result in or produce hollandaise sauce. (Jan. 22, 1943.)

3602. Shoes—Maker, "Custom Made," "Bench Made," and Source or Origin.—Bates Shoe Co., a corporation, engaged in the manufacture of 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, as retail dealers, located in other States and there engaged in the sale of said products to the consuming public, in competition with other corporations and

with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Bates Shoe Co., in connection with the advertisement, offering for sale, sale, or distribution of its shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith:

1. From the use, as a mark, stamp, brand, or label for or in the advertisement of said products, of the name or private brand, or of any simulation of the name or private brand, of a shoe manufacturer or dealer, the effect of which conveys, tends or may tend to convey the belief or impression to purchasers that the products thus marked, branded, or labeled are products manufactured by or for the concern whose name is so used or that the said products had been manufactured in accordance with the specifications or pursuant to the instructions of such concern.

2. From the use of the word "custom," either alone or in connection with the word "made," or of any other word or words of similar meaning or implication, as descriptive of such of said products as are not, in fact, made or done to order of an indicated person or concern.

3. From the use of the words "bench made" as descriptive of products which are not made on a bench or as descriptive of machine-made products.

4. From the use of the words "Lloyds, Ltd." or "British Brogue" or of any other word or words customarily associated with the British Isles, or any foreign country, so as to import or imply or the effect of which tends or may tend to convey the belief or impression to purchasers that products, with reference to which such words are descriptively used, are of British or an indicated foreign origin. (Jan. 22, 1943.)

3603. Anti-Freeze Solution—Qualities, Properties or Results.—Great Northern Chemical Co., Inc., a corporation, engaged in the sale and distribution in interstate commerce of a so-called anti-freeze solution designated "No-Freeze" for use in automobile radiators, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Great Northern Chemical Co., Inc., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of its product designated "No-Freeze" or any other product composed of substantially the same ingredients, whether sold under such name or any other name or names, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that said product is harmless to rubber hose or that its use will not result in or cause accelerated deterioration of rubber products with which it comes in contact.

(b) Representing that "No-Freeze" protects against overheating even in summer weather; or other representation of like meaning or import, the effect of which tends or may tend to convey the belief or impression that the use of said product will assure against overheating of automobile engines and/or radiators in summer or mild weather. (Jan. 22, 1943.)

3604. **Perfumes—Source or Origin.**—Lentheric, Inc., a corporation, organized in 1928 and incorporated under laws of the State of New York; acquired at that time the stock of Lentheric, S. A. (Societe Anonyme), a French corporation located in Paris, France, engaged in conducting directly and through a number of affiliated companies, each operating in a different foreign country and under its own name featuring the word "Lentheric," a business which was originally and for many years, had been conducted in France by one Guillaum Lentheric, an individual. The business, as it has been conducted at all times since 1928, and now being conducted by the said New York corporation, has consisted and now consists of the compounding and selling of cosmetics and toilet preparations, including perfumes. These preparations are and, at all times since 1928, have been sold by the New York corporation in interstate commerce, in competition with other corporations and with individuals, firms, and other concerns also engaged in the sale and distribution of like or similar products. The said corporation entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lentheric, Inc., in connection with the advertisement, labeling, offering for sale, sale, or distribution of its perfumes or other perfume products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Representing, through the use of the word "Paris" or "French" or any other word, term, symbol, or picturization indicative of French or other foreign origin of such products, or in any manner that perfumes which are made or compounded in the United States of America are made or compounded in France or in any other foreign country: *Provided, however,* That the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States of America.

2. Using any French or other foreign word or words or terms, as brands or trade names for perfumes or other perfume products made

or compounded in the United States of America, without clearly and conspicuously stating in immediate connection or conjunction therewith that such products are made or compounded in the United States of America. (Jan. 26, 1943.)

3605. Surgical Supplies—Manufacturer and Doctor's Design or Supervision.—Belle Propper and Seymour Schumann, individuals, trading as Dr. Propper Manufacturing Co., engaged in the sale and distribution in interstate commerce of surgical supplies including wound clips designated "Serature" clips, 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.

Belle Propper and Seymour Schumann and each of them, in connection with the sale and distribution of their surgical supplies in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner hereinabove set forth, agreed forthwith to cease and desist from:

(a) The use of the word "Manufacturing" or the abbreviation "Mfg." or other word or term of like meaning as part of their trade name; and from the use of such word or term 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 actually own and operate or directly and absolutely control the factory or factories in which such products are made or manufactured.

(b) The use of the abbreviation "Dr." or other term or word of like meaning as part of their trade name; and from the use of said term or 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 the aforesaid wound clips were designed by or manufactured under the supervision of a physician or doctor of medicine. (Jan. 26, 1943.)

3606. Men's Neckwear—Manufacturer and Composition.—Aaron Smull, an individual, trading as Lion Neckwear Co., engaged in the sale and distribution of men's neckwear 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.

Aaron Smull, in connection with the sale and distribution of his neckwear in commerce as defined by the Federal Trade Commission Act agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that he manufactures such merchandise; and from the use of the word "manufacturer" 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 he makes or manufactures the merchandise offered for sale or sold by him or that he actually owns and operates or directly and absolutely controls a plant or factory in which such merchandise is made or manufactured.

(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"; and from the use of said word or words in any way so as to mislead, confuse, or deceive purchasers or prospective purchasers into the erroneous belief that said product is composed of "wool" or woolen fibers.

(c) Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or 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."

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Aaron Smull 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. (Feb. 2, 1943.)

3607. Jewelry, Including Watches—Foreign as Domestic, Prices or Values, Government Request and Disposition of Product Traded In.—Weisfield & Goldberg, Inc., a corporation, engaged in the sale and distribution of jewelry, including watches, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Weisfield & Goldberg, Inc., in connection with the sale and distribution of its jewelry in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. Representing, directly or inferentially, that watches or other jewelry products are made in the United States when, in fact, such products are manufactured in whole or in part in a country or countries other than the United States of America.

2. Representing as the customary or regular prices or values of watches or other jewelry products prices or values which, in fact, are fictitious and in excess of the prices at which such products are regularly and customarily offered for sale and sold in the normal and usual course of business.

3. The use of the statements "Uncle Sam Wants Your Old Watch for the Boys in the Service," "75,000 Watches Wanted For the Boys in the Service," or "Hundreds of Requests Are Pouring in From Soldiers, Sailors and other Service Men, for the Watches You Folks Have Traded In"; or any other statement or representation the effect of which tends or may tend to convey the belief or impression that the United States Government or any department thereof has requested used watches for men or women in the armed services.

4. Representing, directly or inferentially, that any watch received in trade or as partial payment for other goods will be given to soldiers, sailors, or men or women in the armed services unless such watch actually is disposed of in the manner indicated. (Feb. 2, 1943.)

3609.* **Luggage—Prices and Wholesale.**—Walter C. Leute, an individual, engaged in the sale and distribution of luggage 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.

Walter C. Leute, in connection with the sale and distribution of his luggage in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(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 sold or offered for sale at retail; and from using fictitious price figures on labels on said merchandise or in pricing sheets pertaining thereto.

(b) Representing, directly or inferentially, that the prices at which he actually sells or offers for sale 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. (Feb. 9, 1943.)

3610. **Buttons—Composition and Government Endorsement. Approval, and Standards Conformance.**—Freitag & Sons, Inc., a corporation, en-

* Stipulation 3608, not included at this point, was approved by the Commission on December 18, 1942, and is therefore published in vol. 35. See p. 900.

gaged in the business of manufacturing buttons 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.

Freitag & Sons, Inc., in connection with the advertisements, offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use of the word "horn," either alone or in connection with the word "genuine" or with any other word or words, as descriptive of those of its buttons which are not made of horn, and from the use of the word "horn" in any way, the effect of which tends or may tend to cause or convey the belief or impression that said products are made of horn, and/or that they are composed of the same tough fibrous material of which true horns are composed.

2. The use of the word "ivory" as descriptive of those of its buttons which are not made of ivory, the dentine of the tusks of large mammals, and from the use of said word to describe its buttons cut from a type of nut, a vegetable product, unless, in each instance of such use, the word "ivory" shall be immediately accompanied by the word "vegetable" or by some other word or words so as to indicate clearly and unequivocally that said products are not made of ivory, that is to say, the dentine of the tusks of large mammals.

3. The use of the words "Official U. S. Army" as descriptive of its buttons, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that the War Department, or any other official agency of the United States Government, has approved or endorsed the buttons made by said corporation and/or that the buttons manufactured by said corporation have been adopted or established by the United States Government, or any agency thereof, as the official button or insignia for its armed forces, or any thereof: *Provided, however,* That nothing herein contained shall be construed to prevent said corporation from stating or representing that its buttons conform with the specifications as approved and used by the United States Army, when and if such is the fact. (Feb. 9, 1943.)

3611. "Hollywood Liquefier"—Scientific or Relevant Facts, Qualities, Properties or Results, Comparative Merits, Etc.—Seremus Wills, an individual, trading as Hollywood Liquefier Sales, engaged in the sale and distribution in interstate commerce of a device designated "Hollywood Liquefier" for use in pulverizing and reducing fruits, vegetables and other food products to a puree or semiliquid condition, in com-

petition 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.

Seremus Wills, in connection with the sale and distribution of the device designated "Hollywood Liquefier," or any other device of substantially the same construction, whether sold under such name or any other name or names, agreed forthwith to cease and desist from representing, directly or inferentially:

1. That the digestion of man cannot make available to the body vitamins and/or mineral salts contained in vegetable cells.
2. That the human alimentary tract is incapable of liberating and assimilating the nutrient contained in fruits or vegetables.
3. That it is necessary that fruits or vegetables be reduced to a semi-liquid condition or puree in order to be assimilated by the digestive process.
4. That the nutritive substance contained in fruits, vegetables, meats and/or nuts processed in the Hollywood Liquefier is more easily digested or more quickly assimilated than when such food products are eaten in their customary forms.
5. That the ordinary diet is deficient in vital organic materials contained in fresh fruits or vegetables.
6. That the cells of fruits or vegetables must be broken down by a mechanical device such as the Hollywood Liquefier in order that the food elements may be assimilated.
7. That the food value of the juice of one raw head of lettuce or cabbage exceeds the food value of a hundred pounds of cooked lettuce or cabbage, or otherwise misrepresenting the food value of vegetable or fruit juices.
8. That juices extracted by means of the Hollywood Liquefier have any specific effect in connection with loss of weight or that their use will obviate the craving for food of higher caloric content when the energy expended is in excess of the caloric intake.
9. That the consumption of juices processed in the Hollywood Liquefier can be depended upon to result in new vital energy, endurance, mental stamina or keenness, or to restore or maintain health;
10. That the use of juices produced by means of the Hollywood Liquefier results in "Buoyant Health" or "Vibrant Health" or will "Open Nature's Storehouse of Hidden Health Treasures"; that such device is a "miracle life saver" or the "health giving household wonder of the age"; that said juices can be depended upon to restore or assure health.
11. That celery and cucumber juice, carrot juice, endive, and apple juice, or a combination of carrot and garlic, carrot juice or the juice

of grapefruit and lemons or any other vegetable or fruit juices or combination thereof, constitute an adequate treatment for arthritis.

12. That celery is a great cleanser, alkalizer, or builder of vitality or that it is a nerve tonic or the most potent or beneficial of all juices.

13. That spinach is indicated for obesity.

14. That lettuce causes increased virility, is an antiputrefactive or is a remedy for nervousness.

15. That cabbage is indicated for the hair, teeth or bones or for obesity.

16. That cucumber is indicated for obesity or acidosis or that its use results in increased flow of urine.

17. That the use of carrots results in increased vitality or is indicated for stomach ulcers or that such vegetable is a liver cleanser.

18. That onions are indicated for sinus, catarrh, colds, or acidosis.

19. That beets are a blood builder or dissolve calcium deposits.

20. That tomatoes are indicated for sinus or acidosis.

21. That watercress is a fine cleanser, is a blood builder, or that its use results in increased virility.

22. That radishes are indicated for mucous conditions.

23. That almonds are a marvelous antacid.

24. That calves liver is a potent builder of strength or is a glandular aid.

25. That beef heart is indicated for normalizing thyroid gland in overweight condition.

26. That the drinking or consumption of milk by children is productive of or results in colds or chronic catarrh.

27. That fruits and vegetables processed in the Hollywood Liquefier provide more vitamins, mineral salts, or other "life-giving qualities" than an equal quantity of milk.

28. That the substitution of liquid vegetable juices for milk in the diet of a child will result in physical improvement or a reduction in colds or catarrhal conditions.

29. That fruit and vegetable juices will exert a detoxifying effect upon the body.

30. That vitamins, to be effective, must be served or consumed in a raw, uncooked, or uncanned condition; or that there are practically no vitamins in canned vegetables.

31. That certain organs or parts of the body require for their proper functions certain vitamins and/or minerals when, in fact, such organs or parts of the body require vitamins or minerals other than or in addition to those so indicated.

32. That certain vitamins and/or minerals have a specific effect upon certain organs or parts of the body, when, in fact, such vitamins or minerals do not provide or afford the effects so specified.

33. That calcium protects against tuberculosis, rickets, or acidosis.
34. That phosphorous builds the brain and nervous system or stimulates the growth of hair.
35. That iron prevents fatigue, headaches, or asthma.
36. That the use of sodium avoids congestion, aids digestion, prevents acidosis, purifies the blood, or is a remedy for kidney disorders.
37. That potassium prevents or relieves constipation, helps prevent nervousness, or is a competent remedy for skin diseases and underweight.
38. That magnesium stimulates the glands and liver, keeps muscles elastic, creates beauty, or good disposition or helps prevent constipation.
39. That manganese gives strength or protects the inside lining of the heart, blood vessels, or urinary passages.
40. That sulphur intensifies feelings or emotions, is a body purifier or cleanser or increases bile functions.
41. That silicon gives finishing touches to the body or life to the skin, causes beautiful hair, pearly teeth or nails, or tones the system.
42. That chlorine purifies or cleanses the glands or intestines, cleans or expels waste from the body, helps in reducing weight, or contracts the cells.
43. That fluorine builds teeth enamel, preserves bones, or builds resistance.
44. That iodine, taken internally, ejects and counteracts poisons or works against obesity, impotence, low vitality, frigidity, neuritis, or skin disease.
45. That Vitamin A prevents and relieves anemia or "many degrees of eye trouble" or that it builds resistance or relieves bone trouble.
46. That Vitamin B prevents and relieves nervous diseases, neuritis, or paralysis, or that it is a gland stimulant.
47. That Vitamin C prevents muscular diseases or loss of weight.
48. That Vitamin E promotes mental or physical vigor.
49. That Vitamin G promotes growth, protects skin structures, or promotes appetite or assimilation.
50. That carbon producing foods are dangerous to health.
51. That quick temper and impulsiveness result from a lack of nitrogen.
52. That a lack of magnesium is the usual cause of deficient mentality in children.
53. That bad nerves and mental depression usually result from potassium deficiency.
54. That the vitamins control the appropriation of minerals by the body.

55. That a large proportion of the vitamins, fats, or other "vital food properties" contained in fruits or vegetables is thrown away or lost when the juices therefrom are extracted by hand or by machinery or devices other than the Hollywood Liquefier.

56. That vitamins are living substances.

57. That in any significant number of cases constipation is caused by a mineral or vitamin deficiency. (Feb. 10, 1943.)

3612. **Dresses and Other Textile Fabrics—Composition.**—William H. Jacobsen, an individual, engaged, as a commission sales representative for various dress manufacturers, in the sale and distribution of women's and children's dresses 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.

William H. Jacobsen, in connection with the sale and distribution of dresses or other textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the words silk, crepe, taffeta, velvet, shantung, or any other word or words connoting silk to designate or describe a product which is not composed of silk. If the product is composed in part of silk and in part of a fiber or material other than silk, and the word "silk" or other silk connoting word is used properly to describe such silk content, then the word "silk" or other silk connoting word, whenever used, shall be immediately accompanied in equally conspicuous type by some other word or words so as to accurately designate each constituent fiber or material in the order of its predominance by weight, beginning with the largest single constituent. If the words crepe, taffeta, velvet, or other word or words of like meaning are used properly to describe the construction of a product containing fiber other than silk, such word or words when so used shall be accompanied, in immediate conjunction therewith and in type equally conspicuous, by a word or words truthfully designating and disclosing each constituent fiber or material in the order of its predominance by weight and beginning with the largest single constituent as, for example, "Rayon crepe," for a product of crepe construction and composed of rayon.

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale any product composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such product is composed of or contains rayon; and, when 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 con-

stituent fiber of said product in the order of its predominance by weight, beginning with the largest single constituent. (Feb. 10, 1943.)

3613. **Children's Dresses or Other Textile Fabrics—Composition and Source or Origin.**—Alfred Lewis and Abraham Goldman, copartners, trading as Donna Kiddie Togs, engaged in the sale and distribution of children's dresses in interstate commerce, in competition with other partnerships and with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Alfred Lewis and Abraham Goldman, and each of them, in connection with the sale and distribution of dresses or other textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the words silk, crepe, or any other word or words connoting silk to designate or describe a product which is not composed of silk. If the product is composed in part of silk and in part of a fiber or material other than silk, and the word "silk" or other silk connoting word is used properly to describe such silk content, then the word "silk" or other silk connoting word, whenever used, shall be immediately accompanied in equally conspicuous type by some other word or words so as to accurately designate each constituent fiber or material in the order of its predominance by weight, beginning with the largest single constituent. If the word crepe or other word or words of like meaning are used properly to describe the construction of a product containing fiber other than silk, such word or words when so used shall be accompanied, in immediate conjunction therewith and in type equally conspicuous, by a word or words truthfully designating and disclosing each constituent fiber or material in the order of its predominance by weight and beginning with the largest single constituent as, for example, "rayon crepe" for a product of crepe construction and composed of rayon.

(b) Advertising, labeling, branding, invoicing, selling, or offering for sale any product composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such product is composed of or contains rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon," each constituent fiber of said product in the order of its predominance by weight, beginning with the largest single constituent.

(c) The use of the words "Rayon French Crepes" as descriptive of products not produced in France; and from the use of the word "French" either alone or in connection with the words "rayon" and/or

"crepes" 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 products were produced in or imported from France. (Feb. 10, 1943.)

3614. Children's Dresses or Other Textile Fabrics—Composition.—Samuel Topp, an individual, trading as Alpine Children's Dress Co., engaged in the sale and distribution of children's dresses 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 Topp, in connection with the sale and distribution of dresses or other textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the words silk, crepe, taffeta, velvet, or any other word or words connoting silk to designate or describe a product which is not composed of silk. If the product is composed in part of silk and in part of a fiber or material other than silk, and the word "silk" or other silk connoting word is used properly to describe such silk content, then the word "silk" or other silk connoting word, whenever used, shall be immediately accompanied in equally conspicuous type by some other word or words so as to accurately designate each constituent fiber or material in the order of its predominance by weight, beginning with the largest single constituent. If the words crepe, taffeta, velvet, or other word or words of like meaning are used properly to describe the construction of a product containing fiber other than silk, such word or words when so used shall be accompanied, in immediate conjunction therewith and in type equally conspicuous, by a word or words truthfully designating and disclosing each constituent fiber or material in the order of its predominance by weight and beginning with the largest single constituent as, for example, "rayon crepe" for a product of crepe construction and composed of rayon.

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale any product composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such product is composed of or contains rayon; and, when 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. (Feb. 10, 1943.)

3615. Children's Dresses or Other Textile Fabrics—Composition.—Charles Edelman, an individual, engaged in the sale and distribution of children's dresses in interstate commerce, in competition with other individuals and with corporations, firms, and partnerships likewise

engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Charles Edelman, in connection with the sale and distribution of dresses or other textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the word "Shantungs" or any other word or words connoting silk to designate or describe a product which is not composed of silk. If the product is composed in part of silk and in part of a fiber or material other than silk, and the word "silk" or other silk connoting word is used properly to describe such silk content, then the word "silk" or other silk connoting word, whenever used, shall be immediately accompanied in equally conspicuous type by some other word or words so as to accurately designate each constituent fiber or material in the order of its predominance by weight, beginning with the largest single constituent. (Feb. 10, 1943.)

3616. Mineralized Water—Qualities, Properties or Results.—Steve Ladas and Olga Spanapolos, copartners, trading as Min-O-Ral Products Co., engaged in the sale and distribution in interstate commerce of mineralized water designated "Min-O-Ral," 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.

Steve Ladas and Olga Spanapolos, 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 "Min-O-Ral" 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 representing, directly or inferentially:

(a) That the use of said preparation will constitute or provide an adequate treatment or permanent or temporary relief for headaches, kidney or bladder disorders, arthritis, gout, stiffening of the joints, constipation, or piles;

(b) That said preparation will bolster the system or is effective in overcoming fatigue, providing pep or energy, correcting weakness or underweight, restoring lost vitality or promoting resistance to infections or run-down conditions resulting from impoverished blood and improper elimination or any other cause;

(c) That said preparation, administered internally as directed is of any therapeutic value other than in the treatment for simple iron deficiency; or that said preparation, administered externally, has any

value other than that of an inhibitory antiseptic or an astringent or styptic. (Feb. 15, 1943.)

3617. Stapling Devices and Staples—Manufacturer, Government Specifications Compliance, Comparative Prices and Merits and Qualities, Properties or Results.—Ajax Tool & Die Co., a corporation, engaged in the sale and distribution in interstate commerce of paper stapling devices and staples, respectively designated "Ajax Staplers" and "Ajax Staples," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ajax Tool & Die Co., in connection with the sale and distribution of its staplers or staples in commerce as commerce is defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing, directly, inferentially or by implication:

(a) That it makes or manufactures staples for stapling machines or that it actually owns and operates or directly and absolutely controls a plant or factory in which such products are made or manufactured;

(b) That its staples meet United States Government standard staple specifications; or that the United States Government or any department or agency thereof has established standard specifications for staples for use in paper stapling devices.

(c) That the price or cost of "Ajax Staples" is less than that of any other standard size staples sold in competition therewith.

(d) That by the use of the "Ajax Stapler" any and all work can be done that can be done or accomplished by the use of any higher priced stapling machine or machines.

(e) That the "Ajax Stapler" cannot jam or clog or that such device is immune to jamming or clogging. (Feb. 22, 1943.)

3618. Fabric Remnants—Composition.—Anthony Salzman, an individual, trading as Union Mill Ends, engaged in the business of selling fabric remnants for making dresses, window curtains, towels, quilts, and the like, 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.

Anthony Salzman, in connection with the advertisement, offering for sale, sale or distribution of his aforesaid fabric products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "silk" as descriptive of such of said products as are not composed of silk; and from the use of the word "silk," or of any other silk connoting

word or words, in any way, so as to import or imply or the effect of which tends or may tend to cause or convey the belief or impression that products, to which such word or words purportedly refer, are made of silk, the product of the cocoon of the silk worm, when in fact, said products are made of material other than silk. The said individual also agreed to cease and desist from selling or offering for sale in commerce as defined by said act, any product made of rayon without disclosure of the fact that the material of which said product is composed is rayon, made clearly and unequivocally, in the invoices and labeling and in all advertising matter, sales promotional descriptions, or representations thereof, however disseminated or published. (Feb. 22, 1943.)

3619. Diplomas—University, Etc.—Chartered University of America; Medical Council; and Board of Examinations and Management of Huron, S. D., a South Dakota corporation, W. A. Johns, Julia W. Johns, and Isiah O. Hagen constitute the Board of Directors of said corporation and their place of business is at the same address as that of the aforesaid corporation. The said corporation and the said W. A. Johns, Julia W. Johns, and Isiah O. Hagen, individually and as directors and officers of said corporation, engaged in the sale and distribution in interstate commerce and in commerce between the State of South Dakota and the foreign nation of India of so-called diplomas which purport to evidence the conferring of scholastic degrees, causing such diplomas, when sold, to be shipped from their place of business in the State of South Dakota to purchasers in a foreign nation or country. Said corporation and individuals, in competition with educational institutions engaged in sale and distribution of courses of instruction in commerce and in the awarding of diplomas, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Chartered University of America; Medical Council; and Board of Examinations and Management of Huron, S. D., and W. A. Johns, Julia W. Johns, and Isiah O. Hagen, and each of them, agreed forthwith to cease and desist from:

(a) The use of the words "university," "medical council" or "board of examinations" as part of or in connection with the corporate or trade name under which they carry on their business; and from the use of such words or any other word or words of like meaning, either alone or in connection with any other word or words, in any manner the effect of which tends or may tend to convey the belief or impression that they are maintaining, operating or conducting a university, a medical council, a board of examinations or an institution for the promotion of learning in the United States of America.

(b) Representing, through the issuance of so-called diplomas, degrees, or other documents, which purport to have been issued by a duly qualified educational institution of higher learning authorized to confer academic or scientific rank, that their business is that of a university or an institution of learning.

(c) Representing, in any manner, either directly or inferentially, that their business is that of conducting an accredited educational institution or that they issue diplomas, degrees, or any similar certificates or documents that are recognized or accepted by any reputable college or university.

(d) The use of the initials or symbols "M.A." or "LL.D." in connection with the name W. A. Johns or the use of the initials or symbols "M. A." or "Ph. D." in connection with the name of J. W. Johns, that is, Julia W. Johns; and from representing by the use of any initials, symbols, or words denoting academic or scholastic degrees that the aforesaid individuals or any of them have received or have been accorded any degree or degrees which have not been bestowed upon them by an accredited college or institution. (Feb. 22, 1943.)

3620. Blankets—Composition and Width of Product.—Harold A. Lifton, an individual, trading as Harold Lifton Co., engaged in the sale and distribution of blankets in commerce, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harold A. Lifton, in connection with the sale and distribution of blankets in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the word "satin" or any other word or words connoting silk as a designation for or as descriptive of a product not composed of silk. If the product is composed in part of silk and in part of a fiber or material other than silk, and the word "silk" or any silk connoting word is used properly to describe such silk content, then the word "silk" or silk connoting word, whenever used, shall be immediately accompanied in equally conspicuous type by some other word or words so as to accurately designate each constituent fiber or material in the order of its predominance by weight, beginning with the largest single constituent. If the word "satin" or other word or words of like meaning is used properly to describe the construction of a product containing fibers other than silk, such word or words when so used shall be accompanied, in immediate conjunction therewith and in equally conspicuous type, by a word or words truthfully designating and disclosing each constituent fiber or material in the order of its predominance by weight and beginning with the largest single con-

stituent as, for example, "satin rayon" for a product of satin construction and composed of rayon.

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale any product composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such product is composed of or contains rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon," each constituent fiber of said product in the order of its predominance by weight, beginning with the largest single constituent.

(c) Representing that blankets are provided, or equipped with "4-inch" bindings when, in fact, the width of such bindings is not 4 inches; and from otherwise misrepresenting such products with respect to the width thereof or in any manner with a tendency and capacity or effect of misleading or deceiving purchasers or the consuming public.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Harold A. Lifton 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. (Feb. 25, 1943.)

3621. Rat and Mouse Exterminator—Qualities, Properties or Results.—Truman P. Cotman, an individual, trading as National Rat and Mouse Exterminator Co., engaged in the sale and distribution in interstate commerce of a product designated "Kil-Balm Rat and Mouse Exterminator," 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.

Truman P. Cotman, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of his product designated Kil-Balm or any other product of substantially the same composition or possessing substantially the same properties, whether sold under such name or any other name or names, agreed forthwith to cease and desist from representing, directly or inferentially:

(a) That said product fed to rats or mice will embalm their bodies, that is, preserve such bodies or prevent the decay thereof; or that it is an embalming agent.

(b) That the bodies of rats or mice killed by the use of said preparation will leave no bad "smell" or odor; or that the carcasses of such rodents will not emanate the odor incident to putrefaction.

(c) That said product will kill "All Your Rats In 2 or 3 Days Time" or "rid your house, or out buildings, of all rats or mice in 2 or 3 nights

time" or that it can be depended upon to destroy or eradicate all rats and/or mice in or from buildings or premises in 2 or 3 days or any other period of time. (Feb. 25, 1943.)

3622. **Worcestershire Sauce—Source or Origin.**—The Crosse & Blackwell Co., a corporation, engaged in the sale and distribution in interstate commerce, of food products including a condiment or sauce designated "Cross & Blackwell Worcestershire Sauce," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Crosse & Blackwell Co., in connection with the sale and distribution in commerce as defined by said act of its Cross & Blackwell Worcestershire Sauce or any other product of domestic origin, or the advertising thereof by the means and in the manner above set forth, agreed forthwith to cease and desist from representing, directly or inferentially, by the use of the words "London," "London's," "Britain's," "English" or any other word, phrase, term, symbol, or depiction indicative of British or other foreign origin, or in any manner, that said product or products were made or imported from Great Britain or other foreign country. (Mar. 9, 1943.)

3623. **Military Clothing and Accessories—Success, Use or Standing, Time in Business, Manufacturer, Composition, Unique, Etc.**—Browning King Uniform Corporation, a corporation, engaged in the sale and distribution in interstate commerce, of military clothing and accessories, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Browning, King & Co., founded in the year 1822 and later incorporated as Browning, King & Co., under the laws of the State of Virginia, was a long established, nationally advertised, and favorably known firm engaged in the sale of uniforms. In the year 1933 a Delaware corporation, Browning, King & Co., Inc., was formed and, through purchase, acquired the personal property of the aforesaid Virginia corporation. Under date of July 19, 1934, Browning King Uniform Corporation, designated in paragraph 1 hereof, purchased, subject to certain conditions and limitations, "the good will pertaining to the Uniform and Custom Department of Browning, King & Co., Inc. (a Delaware Corporation), including the right to use of the name 'Browning, King' in connection with the uniform business * * *."

Browning King Uniform Corporation, in connection with the sale and distribution of its merchandise in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, by the use of the words or phrases "Browning, King Corporation ESTABLISHED 1822," "Browning, King Co. Est. 1822," "For more than 100 years it has been Browning-King's policy that no transaction is considered complete unless the customer is fully satisfied" or other statement or representation of like meaning, that it was engaged in the business of selling uniforms or other merchandise prior to the year 1934.

(b) The use of the words "Browning-King," "Browning, King Co." or "Browning King Corporation" as a brand or trade name for its merchandise; from the use of said words, either alone or in conjunction with any other word or words in any manner the effect of which tends or may tend to convey the belief or impression that it and the former Browning, King & Co., Inc., are one and the same entity; and from the use of any words, statements, or representations that import or imply that its merchandise was or is manufactured by Browning, King & Co., Inc., or that it is a successor of the said Browning, King & Co., Inc.

(c) Representing, by means of statements or depictions, or in any manner that it manufactures such merchandise; 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 merchandise offered for sale or sold by it or that it actually owns and operates or directly and absolutely controls a plant or factory in which such merchandise is made or manufactured.

(d) The use of the words "real gold" as descriptive of its said sleeve braid, shoulder straps, belts, cap trimmings, or other ornamentation; from the use of the words "real gold" as a designation for or as descriptive of a product commonly known to the trade and the purchasing public as "gold lace"; and from the use of such words 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 any product not made wholly of gold is gold.

(e) Representing, directly or inferentially, that shirts offered for sale and sold by it are the "ONLY" military shirts that are tailored to fit the form, or that military shirts in general, sold in competition with its military shirts, are not tailored or constructed to fit the wearers thereof. (Mar. 10, 1943.)

3624. Ignition Devices—Manufacturer, Qualities, Properties or Results and Price.—Pearle B. McGready, an individual, trading as United Automotive Manufacturing Co., engaged in the assembly of ignition devices intended for use on automobiles to augment the spark plugs and increase performance, and in the sale of said devices, under the trade names "Super-Spark" and "Circuit Master" in interstate com-

merce, 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.

Pearle B. McGready, in connection with the offering for sale, sale, or distribution of the aforesaid ignition devices in commerce, as commerce is defined by the Federal Trade Commission Act, agreed forthwith to cease and desist:

1. From the use of the word "manufacturing" as part of the trade name used by her in connection with the said business, and from the use of the word "manufacturing" or "factory" or of any other word or words of similar meaning or import, the effect of which tends or may tend to convey the belief or impression that the said individual makes or manufactures the devices sold by her, or that she actually owns and operates or directly and absolutely controls the factory or plant in which said devices are made or manufactured.

2. From the use of the term "Super-Spark" as a designation for said devices, or any thereof, and from the use of the said term in any way, the effect of which tends or may tend to create or cause the belief that the directed use of said devices will cause or effect a greater change in spark characteristics than actually does occur, or that they, or any thereof, will cause fouled plugs to fire that will otherwise misfire, or that the so-called "Circuit Master" device will increase the ability of the circuit to fire a fouled spark plug or to improve running conditions of a motor with normal ignition output.

3. From the use on the containers of said devices, or in any other way, of any price marking or other means of purportedly representing the retail selling price of the devices, or any thereof, when in fact, said price marking or purported selling price is fictitious, exaggerated or in excess of the price for which said devices are customarily sold in the usual course of retail trade. (Mar. 10, 1943.)

3625. Electrically Heated Scalp Caps and Facial Masks—Nature and Qualities, Properties or Results.—A. O. Dyke, also trading as the Nu Yorker, an individual, engaged in the sale and distribution in interstate commerce of electrically heated scalp caps and facial masks, respectively designated "The 'Nu Yorker' Infra-Red Beauty Mask" and "The 'Nu-Yorker' Infra-Red Scalp Cap," in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. O. Dyke, 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 his elec-

trically heated scalp caps or facial masks respectively designated "The 'Nu Yorker' Infra-Red Beauty Mask" and "The 'Nu Yorker' Infra-Red Scalp Cap" or any other device of substantially the same construction or possessing substantially the same properties, whether sold under such names or any other name or names, agreed forthwith to cease and desist from:

1. The use of the words "infra-red" as descriptive of or as a designation for the heating effect produced by said devices; and from the use of said term or other word or term of like meaning in any manner the effect of which tends or may tend to convey the belief or impression that any material heating effect resulting from the use of such devices is produced by infra-red radiation.

2. The use of the words "3-way switch for heat adjustment" or "low, medium, and high heat" as descriptive of such devices or the switches used therewith; and from the use of such words or any 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 that said electrical heating devices are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different, distinct temperatures or degrees of heat.

3. Representing, directly or inferentially, that such device or devices or the use thereof:

(a) Constitutes an adequate treatment or a dependable relief for sinus congestion or head colds.

(b) Recreates the glamour of youth or imparts any glow or color to the skin other than such temporary glow or color as results from the increased flow of blood at the site of the application of heat.

(c) Has an alkaline or antiseptic effect or action.

(d) Will increase the life of the skin.

(e) Has any effect on the action of the skin other than a temporary stimulation of the flow of blood through the skin and/or temporarily stimulating the flow of perspiration from the sweat glands.

(f) Attracts soluble salts.

(g) Is of any value in the treatment of nervous diseases.

(h) Will exert any significant influence upon skin metabolism.

(i) Will destroy germ life.

(j) Will counteract the effect of chemicals contained in facial creams or cosmetics. (Mar. 15, 1943.)

3626. Trusses—Nature, Qualities, Properties or Results, History, Time in Business, and Institute.—Julius Portnow, an individual, trading as Pneumatic Institute Co. engaged in the business of selling trusses called "Vita-Pneumatic Action" 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.

Julius Portnow, in connection with the advertising, offering for sale, sale, or distribution of his device designated "Vita-Pneumatic Action," or by any other name, in commerce as defined by the Federal Trade Commission Act, or by means of the United States mails, agreed to cease and desist forthwith from:

1. The use of any word or words, statement, or representation, the effect of which causes or conveys, directly or indirectly, the impression or belief to prospective customers:

(a) That said device is not a truss, or that, by its use, a person, whose condition indicates the need of a truss, would receive therefrom medical or nonmechanical treatment such as would enable him to forego or dispense with the necessity of a truss.

(b) That the use of said device would, of itself, heal, cure, prevent or end difficulties associated with rupture or hernia, or that the use of such device would do more than afford temporary relief for certain kinds of rupture or hernia.

(c) That the said device is new in principle or is a recent discovery.

(d) That the said Julius Portnow has been engaged in business as a rupture specialist for 42 years, or for any designated period of time in excess of what is actually the fact.

2. The use of the word "Institute" as a part of the trade name under which the said Julius Portnow conducts business, and from the use of the said word, in any way, the effect of which tends or may tend to cause the belief or impression that the business conducted by the said individual is that of an organization engaged in the promotion of medical science, the art of healing, or related subjects. (Mar. 15, 1943.)

3627. Textile Fabrics—Composition.—J. H. Thorp & Co., Inc., a corporation, engaged in the sale and distribution of textile fabrics in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth herein.

J. H. Thorp & Co., Inc., in connection with the sale and distribution of textile fabrics in interstate commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from advertising, branding, labeling, invoicing, selling, or offering for sale any product composed in whole or in part of rayon without clearly and unequivocally disclosing, by the use of the word "rayon," the fact that such product is composed of or contains rayon; and, when a product is composed in part of rayon and in part of other fibers, from failing to disclose each constituent fiber in the order of its predomi-

nance by weight, beginning with the largest single constituent. Fiber content disclosure on brands, tags, or labels shall be clearly and definitely set forth on the face or exposed surface of such brands, tags, or labels. In disclosing the constituent fibers of a mixed product, that is, a fabric composed in part of rayon and in part of other fibers, the word "rayon" or other fiber designation shall, whenever used, be immediately accompanied in equally conspicuous type by the name of each other fiber contained in such fabric so as to definitely and accurately designate or disclose each and every constituent fiber therein: *Provided*, That if the fibers comprising at least 95 percent of such mixed product are disclosed by name and also by percentage, then the remaining 5 percent, or less, of such fiber content may be designated as "other fibers" or "miscellaneous fibers" if said 5 percent proportion, or less, is composed of fibers of various kinds, the percentages of which are not definitely known or readily ascertainable. (Mar. 15, 1943.)

3628. Waterproofing and Dampproofing Materials—Qualities, Properties or Results, Government Indorsement and Competitive Products.—A. C. Horn Co., a corporation, engaged in the sale and distribution in interstate commerce, of alleged waterproofing and dampproofing materials, including products designated "Colorundum," "Dehydratine," "Ferro-Fax," "Hydratite" and "Metalon," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. C. Horn 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:

(a) The use of the words "waterproof," "waterproofing," "watertight," "Dampproofing" or other word or words of like meaning as a designation for, as descriptive of or in referring to such product or products: *Provided, however*, That if the product or products are effective waterproofers or dampproofers under certain conditions, then in that case such word or words may be used if immediately accompanied in equally conspicuous type, by such word or words as will definitely and truthfully disclose the conditions or condition under which such product or products are effective for the purpose or purposes represented or indicated.

(b) Representing, directly or inferentially, that any water repellent and/or dampness resisting qualities contained in or imparted by any of said products are permanent or everlasting.

(c) Representing, directly or inferentially, that the United States Bureau of Standards has indicated that "Hydratite" "satisfactorily

waterproofs" or that such product has been designated as the official waterproofing by the United States Bureau of Standards or any other department or agency of the United States Government.

(d) Representing, directly or inferentially, that all products offered for sale and sold in competition with "Hydratite" are inferior thereto. (Mar. 25, 1943.)

3629. Novelty Jewelry—Prices, Values, Qualities, Properties or Results; Composition, Success, Use, or Standing, Etc.—R. E. Beck, an individual, trading as United Sales 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.

R. E. Beck, in connection with the sale and distribution of his jewelry in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing as the customary or regular prices or values of any article of jewelry prices or values which in fact are fictitious and in excess of the prices at which such products are regularly and customarily offered for sale and sold in the normal and usual course of business.

(b) The use of the words "REPLICA DIAMOND RINGS," "REPLICA GEMS," or other word or words of like meaning as descriptive of or in connection with any ring inset or other product which is not in fact a true reproduction of the inset or gem named, that is to say, an article having the essential hardness, properties, and other characteristics of a diamond or other gem.

(c) The use of the terms "14-K Gold Plated," "14-Kt. Gold Finish," or "14-K Finish" or other term of like meaning as descriptive of a gold alloy covering which is not actually of 14-carat fineness and which is not of such substantiality as properly to be designated or described as "14 K Gold Plated".

(d) Representing directly or inferentially, that his jewelry is "high-quality"; that its quality is such as to withstand tests by acid or fire; or that it is acidproof.

(e) The use of the statement "SOCIAL LEADERS, MILLIONAIRES and our finest people wear these * * *," or any other statement or representation of like meaning or implication.

(f) Representing that he is directly cooperating with manufacturers in the sale of such jewelry or, directly or by implication, that he represents any jewelry manufacturer in the sale and distribution of merchandise. (Mar. 31, 1943.)

3630. Preparation for Treating Fabrics—Qualities, Properties or Results.—Cravenette Co., U. S. A., a corporation, engaged in the sale and distribution of a compound or preparation designated "Cravenette" for use as a treatment for fabrics, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cravenette Co., U. S. A., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of its compound or preparation designated "Cravenette" 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 the use of the representations "SHEDS RAIN—SNOW—SLEET," "won't get soggy," or from any other statement or representation of like meaning. (Mar. 31, 1943.)

3631. Steel Products—Composition.—Jessop Steel Co., a corporation, engaged in the sale and distribution in interstate commerce of steel products including products designated "SILVER-PLY Stainless-Clad Steel," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jessop Steel Co., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of products not composed of or plated or clad with silver, agreed forthwith to cease and desist from the use of the words "silver" or "silverclad" either alone or in connection with any other word or words as a trade name or designation for or as descriptive thereof; and from any statement or representation which tends or may tend to convey the belief or impression that such products are made of, contain, or are plated or clad with silver or silver-ply. (Mar. 31, 1943.)

3632. Men's Clothing—Free Goods, Unique, Source or Origin, "Bench-Made", "Custom-Made", Prices or Values, Composition, Etc.—Bond Stores, Inc., a corporation, engaged in the manufacture of men's suits, top-coats, and overcoats, ships such garments from its factories to a number of retail stores owned and operated by it in various States, one such store being located in the District of Columbia, and which stores are engaged in the sale of said garments and the shipment of certain thereof in interstate commerce, as defined by the Federal Commission Act, to purchasing customers located in States other than that in which such shipments have or had their origin and to customers residing within the District of Columbia. The said Bond Stores, Inc., through

such retail outlets, 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.

Bond Stores, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its clothing in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Stating or representing, either directly or by implication that an article of merchandise, as a second or extra pair of trousers, is given as a gratuity or at no extra cost to the purchaser of another article of merchandise, as a suit, when in fact, the price of such alleged gift is included, either in whole or in part, in the amount paid for the merchandise which is purchased.

2. Stating or representing, in any way, that it, the said Bond Stores, Inc., is the only store which features two pairs of trousers with every suit.

3. Using in its advertising, the word "Rochester," alone or in connection or conjunction with any other word or words, as descriptive of the place of manufacture of such of its clothing as is made elsewhere than in Rochester, N. Y.; and from the use of the word "Rochester" in any way, the effect of which tends or may tend to cause or convey the belief or impression that clothing offered for sale and sold by the said Bond Stores, Inc., is manufactured in Rochester, N. Y., when in fact such clothing is not made in such place.

4. The use of the words "bench-made," or of any other words of similar import, as descriptive of clothing which is not hand-tailored.

5. Representing that garments offered for sale and sold by it for \$25 are a \$34.50 value; and from representing, in any way, that the value of said garments is of any indicated amount in excess of the sum for which said garments customarily are sold to customers by the said Bond Stores, Inc., in the usual course of business.

6. The use of the words "verified value" to designate or describe garments, the value of which has not been ascertained or verified by an impartial or disinterested organization.

7. Representing, as through the use of the word "custom," or any other word of similar import, that an article of clothing, offered for sale and sold by the said corporation, is "custom-made," that is to say, tailored or made to measure or order, when such is not the fact.

8. The use of the word "Shetland," or any other word of similar import, to designate or describe any article of clothing which is not made from the wool of Shetland sheep grown on the Shetland Islands or the nearby mainland of Scotland.

9. The use of the words "Kerry's" or "Cameron," or of any simulation of either of said words, in referring to its articles of merchandise,

or any thereof, so as to import or imply, or the effect of which tends or may tend to cause or convey the impression or belief that the articles of clothing so referred to are, respectively, manufactured from fabrics made in County Kerry, Ireland, or in Scotland.

It is further understood and agreed that no provisions of this agreement shall be construed as relieving the said Bond Stores, Inc., in any respect of the necessity of complying with the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (Mar. 31, 1943.)

3633. **Hair and Scalp Preparations—Qualities, Properties or Results, History, Nature, Laboratories, Etc.**—Matilda Richman, an individual trading as Hairtone Co. and as Hairtone Laboratories, engaged in the sale and distribution in interstate commerce of preparations for use on the scalp or hair, variously designated as "Quinine Hairtone," "Quinine Hair Marvel," "Hairtone Scalp Formula," and "Hairtone Hair Straightener," 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 set forth therein.

Matilda Richman agreed, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner set forth of the preparations designated "Quinine Hairtone," "Quinine Hair Marvel," "Hairtone Scalp Formula," "Hairtone Hair Straightener" 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, she will forthwith cease and desist from:

1. Representing, directly or inferentially, that any of said products or the use thereof:

(a) Will promote the growth of hair or constitute an effective treatment for or will check falling hair. .

(b) Is an effective treatment or competent remedy for dandruff or will remove dandruff or dandruff scales from the scalp.

(c) Is indicated for itching or sore scalps, or will result in a healthy condition of the scalp.

2. The use of the word "hairtone" as a designation for such product or products; and from representing, directly or inferentially, that said product or products impart tone to the hair, are powerful stimulants or will put vigor into the hair.

3. The use of the word "straightener" as part of or in connection with the trade name of any of said products; and from representing, directly or inferentially, that said product or products will straighten the hair.

4. Representing that said preparation or preparations are new discoveries; that they are scientific compounds; that they are vegetable compounds; or that they are herbal formulas.

5. The use of the word "laboratories" in connection with or as part of her trade name; and from the use of said word or other words of like meaning in any manner the effect of which tends or may tend to convey the belief or impression that she maintains or operates a laboratory. (Apr. 12, 1943.)

3634. Knitting Yarns—Composition and Source or Origin.—Emile Bernat & Sons Co., 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.

Emile Bernat & Sons Co., 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 "Angora" or any other word of similar import, as a designation for or as descriptive of a product which is not composed entirely of the hair of the Angora goat: *Provided, however,* That in the case of a product composed in substantial part of the hair of the Angora goat and in part of other fibers or materials, the word "Angora" 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,* That in the case of a product composed wholly or in substantial 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.

(b) The use of the words "Cashmere" or "Cashmirdown" or any other word of similar import as a designation for or as descriptive of a product which is not composed entirely of the hair of the Cashmere goat: *Provided, however,* That in the case of a product composed in substantial part of the hair of the Cashmere goat and in part of other fibers or materials, the word "Cashmere" 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.

(c) The use of the words "Shetland" or "Shetlandown" or any other word of similar import as a designation for or as descriptive

of any product which is not composed entirely of fibers from the fleece 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 substantial part of such fiber and in part of other fibers or materials, the word "Shetland" may be used as descriptive of the Shetland 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.

(d) The use of the words "Saxony," "Canterbury," "Stratford," "Yorkshire," "Chantilly," "Spanish," "Norway," "Smyrna," "Persian," or other word or words connoting any foreign geographical origin as designations for or as descriptive of a product or products which are not imported from or made of materials imported from the country, city, or locality indicated by the use of such geographical designation or term.

(e) The use of a pictorial representation of a sheep or lamb on or in labels, bands, or other material used in connection with the sale and distribution of yarn not composed of woolen fibers so as to import or imply or the effect of which tends or may tend to convey the belief or impression that such yarn is composed of woolen fibers.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Emile Bernat & Sons Co. 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. (Apr. 12, 1943.)

3635. Women's Coats—Composition.—Hirshmaur Coats, Inc., a corporation, engaged in the manufacture of women's coats 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.

Hirshmaur Coats, 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:

(a) The use of the words "Persian," "Fur," "Krimmer," or the coined words "Arabakurl," "Polarkurl," "Kurlymo," or "Artic-Kurl" or any other word or words connoting fur, either alone or with the word "fabric" as a designation for or as descriptive of textile fabrics or garments made of textile fabrics; and from advertising, invoicing, labeling, selling, or offering for sale, textile fabrics or garments made of textile fabrics under any representation the effect of which tends or may tend to convey the belief or impression that such fabrics or

garments are composed of the peltries or the fur of any fur-bearing animal.

(b) The use of the words "satin," "taffeta" or any other word or words connoting silk to designate or describe a product which is not composed of silk. If the product is composed in substantial part of silk and in part of a fiber or material other than silk, and the word "silk" or other silk connoting word is used properly to describe such silk content, then the word "silk" or other silk-connoting word, whenever used, shall be immediately accompanied in equally conspicuous type by some other word or words so as to accurately designate each constituent fiber or material in the order of its predominance by weight, beginning with the largest single constituent. If the words "satin," "taffeta" or other word or words of like meaning are used properly to describe the construction of a product containing fiber other than silk, such word or words when so used shall be accompanied, in immediate conjunction therewith and in type equally conspicuous, by a word or words truthfully designating and disclosing each constituent fiber or material in the order of its predominance by weight and beginning with the largest single constituent as, for example, "rayon taffeta," for a product of taffeta construction and composed of rayon.

(c) Advertising, branding, labeling, invoicing, selling, or offering for sale any product composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such product is composed of or contains rayon; and, when 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.

(d) The use of the word "tweed" or any other word indicative of or connoting wool as a designation for or as descriptive of any product which is not composed wholly of woollen fibers of the kind or nature indicated: *Provided, however,* That in the case of a product composed in substantial part of woollen fibers and in part of other fibers or materials, such word or words may be used as descriptive of the woollen fiber content if there are used in immediate connection or conjunction therewith and in equally conspicuous type some other word or words so as to disclose clearly and unequivocally that said product is not composed wholly of woollen fibers.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Hirschmaur Coats, 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. (Apr. 16, 1943.)

3636. **Women's Coats—Composition.**—Lane Bryant, Inc., a corporation, engaged in the sale and distribution in interstate commerce of merchandise including women's coats, in competition with other corporations 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.

Lane Bryant, Inc., in connection with the sale and distribution of its textile fabric garments, in interstate commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the words "Persian" or "Fur" or the coined words "Bokahara" or "Arabakurl" or any other word or words connoting fur, either alone or with the word "fabric," as a designation for or as descriptive thereof; and from advertising, invoicing, labeling, selling, or offering for sale any such garment under any representation the effect of which tends or may tend to convey the belief or impression that it is composed of the peltries or the fur of any fur-bearing animal.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Lane Bryant, 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. (Apr. 16, 1943.)

3637. **Medicinal Preparations—Qualities, Properties or Results.**—Chu Suey Gee, trading as Suey Chee Herb Co., an individual, engaged in the sale and distribution of Chinese medicinal preparations 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.

Chu Suey Gee, in connection with the sale and distribution of his medicinal preparations in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner set forth, agreed forthwith to cease and desist from representing, directly or inferentially, that his pills strengthen the heart or that the use thereof is indicated for strengthening the heart. (Apr. 16, 1943.)

3638. **Steel Products—Maker, "Mills" and "Factories", Etc.**—Howard Lublin, an individual, trading as Republic Manufacturing & Supply Co., engaged in the sale of steel products in commerce, as commerce is defined by the Federal Trade Commission Act, in competition with other individuals, and with various concerns also engaged in similar commercial enterprises, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Howard Lublin, 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 in his printed or advertising matter of whatever kind or description, or in any other way:

1. Of the word "Republic" as part of or in connection with the trade name under which he conducts his business, and from the use of the word "Republic" in any way, the effect of which tends or may tend to convey the impression or belief that the business conducted by the said individual is in any way connected or associated with the business conducted by Republic Steel Corporation of New York, N. Y.

2. Of the word "manufacturing" as part of his trade name, and from the use of the word "manufacturing," or any other word or words of similar meaning or implication so as to import or imply that he manufactures the products 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 products are made or manufactured.

3. Of the words "mills and factories," or of either thereof, alone or followed by a local address, so as to import or imply or the effect of which causes or may cause the belief that the said individual operates or has plants and/or that they are located at the indicated places.

4. Of any representation that he has direct connections with mills or factories, that the prices which he charges are competitive mill prices, or that he has technical, engineering and manufacturing associates or "extensive facilities and experienced organization." (Apr. 20, 1943.)

3639. Artificial Limbs—Free Service, Time in Business, Government Approval, Unique, Comparative Merits, Competitive Products, Etc.—J. E. Hanger, Inc., of Texas, a corporation organized and existing by virtue of the charter granted to it in 1933 by the State of Texas, is one of a number of separate distinct corporations operating independently of each other within defined territories under the name "J. E. Hanger, Inc.," generally in connection with the identifying name of the State of its incorporation, as a licensee or sublicensee of J. E. Hanger, Inc., of Delaware, a corporation organized in 1916, and which has since continued to exist and conduct business under and by virtue of the laws of Delaware.

The said J. E. Hanger, Inc., of Texas, is engaged in the business of manufacturing various types of devices known as "Hanger" limbs, including artificial legs provided with so-called Hanger "Hip Control" and "Knee Control" features, and which leg devices are made either from willow-wood or from an alloy of aluminum called "Dural." Said devices are designed to replace amputated legs and thus to affect functions of the human body, as by restoring, to some extent, the wearer's

ability to walk. The said J. E. Hanger, Inc., of Texas, has sold and now sells said devices to purchasers thereof residing within a specified territory, including the States of Texas, New Mexico, and Arizona, but which purchasers come to the place of business of the said corporation in Dallas, Tex., where their measurements are taken and delivery of devices, when completed, is made. And the said J. E. Hanger, Inc., of Texas, at all times since its incorporation, has been engaged and is now engaged in the performance of the acts and practices hereinafter alleged.

J. E. Hanger, Inc., a Texas corporation, agreed forthwith to cease and desist from disseminating, or causing to be disseminated, or from placing in the hands of others for dissemination, any advertising or printed matter, by United States mails, or by any other means in commerce, as defined by the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of so-called "Hanger" devices, which advertising or printed matter represents, either directly or inferentially:

1. That the said J. E. Hanger, Inc., a Texas corporation, is one of a group or combination of companies having locations in different parts of the United States and abroad, and which are so associated together that each of such companies is legally obligated to furnish service facilities free, or at all, or to assume any responsibility whatever to a customer of any other of such companies, or that the said Texas corporation is the oldest and largest limb manufacturer in the world, that it was established in 1861 or has had 75 years experience; that it has any factories, branches or offices abroad, or that its "Hanger" devices are the only artificial limbs that the British Government purchases for its veterans.

2. That the "Hanger" limbs have been officially approved or endorsed by either the United States Government, or by "many foreign countries," or by "many governments".

3. That the said J. E. Hanger, Inc., is the only manufacturer of artificial limbs adapted to be or which are suspended from the wearer's body by means controlled by or suspended from the hips and/or in such manner as to eliminate the necessity of shoulder harness and straps, or that the so-called hip control appliance manufactured by the said corporation is radically different from that involving the so-called pelvic band means of suspension used by competitors.

4. That the Hanger "Dural Leg" is 20 to 40 percent lighter than competitive legs made of the same material or, in fact, lighter by any appreciable amount than would be an artificial leg made of such material by a competitor for a wearer having substantially the same physical characteristics and who intends to use it under similar conditions and for like purposes.

The said corporation also agreed to cease and desist from disseminating, or causing to be disseminated, or from placing in the hands of others for dissemination, by United States mails or otherwise in commerce, as defined by the Federal Trade Commission Act, of any advertising or printed matter for the purpose of inducing, or which is likely to induce the purchase of the "Hanger" devices, which advertising or printed matter contain statements, pictorial or other representations, the effect of which tends or may tend unwarrantably to disparage a competitor of the said corporation or the products of such competitor and/or improperly to influence the opinion or conduct of customers or prospective customers with respect to such competitor or competitive products. (Apr. 27, 1943.)

3640. Artificial Limbs—Free Service, Size of Business, Government Approval, Unique, Comparative Merits, Etc.—J. E. Hanger, Inc., is a corporation, organized and existing by virtue of charter granted to it in 1916 by the State of Delaware, with principal place of business located in Washington, D. C., engaged in the manufacture of various types of devices known as "Hanger" limbs, including artificial legs provided with so-called Hanger "Hip Control" and "Knee Control" features, and which leg devices are made from willow-wood or from an alloy of aluminum called "Dural." Said devices are designed to replace amputated legs and thus to affect functions of the human body, as by restoring, to some extent, the wearer's ability to walk, and sells and at all times since 1916, sold said devices to purchasers domiciled within the District of Columbia and also to persons residing in States comprising a specified territory in the eastern part of the United States. It is the owner of a number of patents granted it upon features included in the manufacture of said devices and, as such owner, has licensed some three other corporations, each of which is located within a defined territory where it is authorized to use said patents, exclusively in the manufacture by it of such devices and to sell the same under the name "J. E. Hanger, Inc.," generally in connection with the name of the State of its incorporation.

R. Loran Langdale, Inc., a corporation, engaged in formulating, editing, selling, and distributing advertising matter, for a number of years last past, in cooperation with the aforesaid J. E. Hanger, Inc., has prepared and aided in the preparation of advertising, consisting chiefly of catalogs and letterheads, used by the said J. E. Hanger, Inc., and also by the aforesaid licensee corporations, in connection with the sale of the devices above referred to.

The said J. E. Hanger, Inc., of Delaware, and the said R. Loran Langsdale, Inc., have acted and now act in conjunction and in cooperation with each other in the performance of the acts and practices hereinafter alleged.

J. E. Hanger, Inc., a Delaware corporation, and R. Loran Langsdale, Inc., a Maryland corporation, agreed to cease and desist forthwith from disseminating:

(a) Any advertising or printed matter, or causing the same to be disseminated, or placed in the hands of others for dissemination, by means of the United States mails, or otherwise in commerce, as defined by the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of the aforesaid "Hanger" devices, or

(b) Any advertising or printed matter, or causing the same to be disseminated, or placed in the hands of others for dissemination, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as defined by said act, of said devices,

which advertising or printed matter represents, either directly or inferentially:

1. That the said J. E. Hanger, Inc., a Delaware corporation, is one of a group or combination of companies, having locations in different parts of the United States and/or abroad which are so associated that each of such companies is legally obligated to furnish service facilities free, or at all, or to assume any responsibility whatever, to a customer of any other of such companies, or that the said Delaware corporation has any factories, branches, or offices at all of the indicated locations abroad, or that the purported association of J. E. Hanger corporations, operating in the United States of America, is one and the same as that trading under the same or a similar name in England, or in Europe.

2. That the "Hanger" limbs have been officially approved or endorsed either by the United States Government or by "many foreign countries" or "many governments."

3. That the said J. E. Hanger, Inc., is the only manufacturer of artificial limbs adapted to be or which are suspended from the wearer's body by means controlled by or suspended from the hips and/or in such manner as to eliminate the necessity of shoulder harness and straps, or that the so-called hip control appliance manufactured by the said corporation is radically different from that involving the means of hip suspension used by competitors.

4. That the Hanger "Dural Leg" is 20 to 40 percent lighter than competitive legs made of the same material or, in fact, lighter by any appreciable amount than would be an artificial leg made of such material by a competitor for a wearer having substantially the same physical characteristics and who intends to use it under similar conditions for like purposes. (Apr. 27, 1943.)

3641. Candy—Lottery Scheme.—General Scott Dowdy, an individual, presently conducting business as a wholesaler of candy, was formerly engaged, under the trade name “G. S. Dowdy Sales Co.,” in the business of manufacturing candy and which product he sold in interstate commerce, and as such candy manufacturer said individual was engaged in interstate commerce in competition with other individuals and with corporations and other concerns 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.

General Scott Dowdy, trading as “G. S. Dowdy Sales Co.,” under his own name, or any other name or names, in connection with the offering for sale, sale or distribution of his candy products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the aforesaid, or any other, plan or method of sale or of promoting the sale of said merchandise which involves any lottery scheme, gaming device or gift enterprise. (Apr. 28, 1943.)

3642. Food Preparations—Qualities, Properties or Results, Composition, Scientific or Relevant Facts, Etc.—Kovac Laboratories, Inc., a corporation, engaged in the manufacture of certain food preparations trademarked “Kovac,” “Chikovac,” “Papaya Dyjestin,” and “Kovac Type Acidophilus Culture,” and in the sale and distribution thereof 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.

Kovac Laboratories, Inc., in connection with the offering for sale, sale or distribution of its products in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by means or in the manner above set forth, agreed forthwith to cease and desist from representing, directly or inferentially:

(a) That either Kovac, Chikovac, or Dyjestin digests food, supplies the necessary digestive elements to effect perfect nutrition, contains digestive elements to effect perfect nutrition, contains digestive potency to secure assimilation with all food vitamins, inhibits gas distress, overcomes blood poverty, brings about the instant regeneration of the patient's blood, or has any significant effect whatsoever on either the digestion or the blood.

(b) That either Kovac or Chikovac induces restful sleep or has any significant influence in producing sleep.

(c) That Chikovac is a tonic for the liver or, by statement or inference, that it has any beneficial effect upon the liver.

(d) That Kovac Type Acidophilus Culture eliminates toxic poisons or may be relied upon to keep the bowels in sweet and clean order.

(e) That any of the Kovac Food Products is capable of bringing about or assuring good appetite, good digestion, normal bowels, vitality, strong fighting blood, sound nerves, refreshing sleep or efficient body resistance against disease.

(f) That Kovac is indicated or efficacious for nerve comfort or body building, keeps the intestines sweet and clean, or is beneficial in the eradication of autointoxication, colitis, or ulcerations.

(g) That Kovac Culture is noted for activity especially in acute infections in whatever part of the body—even in the head, eyes, or spine—or that it actually is active in any such way; or that it has brought about almost immediate relief, or any significant relief, whenever accumulated toxic poison is the underlying cause of an affliction or disorder.

(h) That either old age or body deterioration has been or can be deferred or corrected by a consistent use of the Kovac Products.

(i) That by the use of either Kovac, Chikovac, Dyjestin, or Kovac Type Acidophilus Culture one's nerves are relieved from starvation, rendered strong and efficient, or maintained in a vigorous and efficient condition; that a principal underlying cause of nervousness and nervous disorders is a toxic poison which can be eliminated by an ingredient contained in said Kovac preparations.

(j) That the administration of acidophilus culture is recognized as the only practical and effective measure in dealing with autointoxication; that the effective power of Acidophilus Bacillus to destroy the toxic microbe is attested by hundreds of scientists and clinical tabulations the world over; or that its importance as such is no longer questionable.

(k) That a change in the intestinal flora is indicated for the following bodily afflictions, or that, because of their acidophilus content or otherwise, the Kovac preparations constitute competent treatments or effective remedies for any thereof:

Muddy complexion.	Neuralgia.
Irritability.	Constant backache.
Sores.	Weakened abdominal muscles
Pimples.	leading to obstinate constipation.
Itching with or without scales.	Chronic bleeding gums.
Inflammation of the skin with	Fetid enlarged tonsils.
or without scales.	Fetid breath (halitosis).
Migraine.	Fetid nasal discharge.
Feeling of discomfort (Malaise).	Loss of hair.
Drowsiness.	Asthma.
Disturbed sleep.	Bronchitis.
Fatigue (Chronic).	Dullness or heaviness.
Mental stupor.	

Affected vision.	Hardening of the lungs.
Brown rings around eyes.	Discharge of pus.
Cataract.	Sac under the eye.
High blood pressure.	Hardening of the crystalline lens.
Enlargement of blood vessels (dilation).	Low blood pressure.
Varicose veins.	Hardening of arteries.
Bacterial infection (septicemia).	or arteriosclerosis (induration).
Fatty degeneration of the heart.	Toxic blood (uremia).
Biliousness.	Anemias, incl. chlorosis.
Hardening of liver.	Fainting spells.
Degeneration of liver.	Inflammation of the heart tissues.
Jaundice.	Abscess of liver.
Gallstones.	Enlargement of spleen.
Offensive sweat.	Inflammation of the gall bladder.
Eruptions.	Distension of abdomen.
Boils.	Dyspepsia.
Carbuncles.	Cancer of stomach.
Eczema.	Inflammation of the intestines
Chronic congestion (acne).	(enteritis).
Dizziness (vertigo).	Kinks in the colon.
Stinging, violent or constant head ache.	Catarrh of intestine.
Depressed mind.	Tuberculosis of bowels.
Physical disability.	Acidosis.
Defective memory.	Strong body odor.
Insomnia.	Depleted body resistance.
Nervous irritation.	Chronic digestive disturbances.
Difficult concentration.	Tenderness of abdomen.
Neuritis.	Abdominal pains.
General weakness.	Inflammation of the stomach
Arthritis.	(gastritis).
Muscular rheumatism.	Dysentery.
Gout.	Diarrhoea, acute or chronic.
Foul taste.	Constipation.
Inflammation of tonsils.	Colitis.
White ulcers in the mouth	Catarrh.
(thrush)	Rheumatism.
Quinsy.	Chronic ulcers.
Bronchial asthma.	Systemic toxemia.
	Premature ageing.

Kovac Laboratories, Inc., also agreed to cease and desist from:

1. Featuring or naming mineral salts such as calcium, iodine, iron, magnesium, manganese, phosphorus, or other chemical elements as ingredients of its products, in any manner indicating or suggesting that such content has any potency or significance in the production and

sustenance of healthy blood, glands, nerves, or other fluids, plasma, or tissues of the human body, when in fact said ingredients are not present in amounts sufficient to have an appreciable effect for the purposes designated. (Apr. 28, 1943.)

3643. Furniture—Comparative Data, Success, Use or Standing, Etc.—Kroehler Manufacturing Co., a corporation with its general offices in the city of Naperville, State of Illinois, and with factories or places of business in the States of Illinois, Ohio, Texas, New York, and California, engaged in the manufacture of furniture 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.

Kroehler Manufacturing Co., in connection with the sale and distribution of its furniture in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing, directly or inferentially, that any comparative figures, statistical presentation or data pertaining to volume of sales, turnover, gross margin, or cost of merchandise of Kroehler dealers, as compared with furniture dealers generally, is based upon or derived from reports by any number of Kroehler dealers in excess of the number actually reporting on each and every subject matter concerning which representations are made; or from any representation which connotes or implies that a cross section of its dealer statistics predicated upon scanty, sketchy, or insufficient data may be accepted or relied upon as the basis for an accurate, true, or adequate survey of the business of Kroehler dealers, compared with that of its competitors. (Apr. 27, 1943.)

3644. Jewel Tip Phonograph Needles—Qualities, Properties or Results, Success, Use or Standing, Etc.—Electrovox Co., a corporation, organized, existing and doing business under and by virtue of laws of the State of New Jersey with principal place of business located in East Orange, N. J., engaged in the business of selling commodities in interstate commerce, the said commodities so sold including blank phonograph records, pick-ups and so-called Walco phonograph needles of both the playback and cutting types and having a bent or straight shank of duralumin equipped with a sapphire tip or point; 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.

Electrovox Co., in connection with the advertisement, offering for sale, sale, or distribution of its Walco sapphire or jewel tip phono-

graph needles 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 "permanent" as descriptive of such needles, and from the use of the said word or of any other word or words which import or imply or the effect of which tends or may tend to convey the impression or belief that said devices are of such unlimited span of usefulness that they will continue or endure without fundamental change when employed for their designed uses.

2. The use of the words "Will not wear down records" as descriptive of the results of the use of said needles, and from the use of any statement or representation, the effect of which tends or may tend to cause the belief or impression that contact between a revolving record and the said needle will not cause impairment, as for example, that due to wear of either the needle or record.

3. Representing that the said needles have been adopted as standard equipment by the leading phonograph manufacturers, unless in immediate connection or conjunction with such representation it shall be clearly and unequivocally disclosed that the adoption of such devices as standard equipment is not universal with such manufacturers.

4. Representing that its jewel tip needles are "identical" to those used as original equipment on the most expensive phonographs, when in fact, such type of phonograph is equipped with needles having the more expensive diamond tips or points. (May 3, 1943.)

3645. Shoes—Nature of Product.—A. Freedman & Sons, Inc., a corporation, engaged in the business of manufacturing shoes and in the sale thereof in interstate commerce, in competition with other corporations and with individuals 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.

A. Freedman & Sons, Inc., in connection with the offering for sale, sale, or distribution of its shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "A solid steel arch" or of any other words of similar import or meaning, as a mark, stamp, brand, or label for such of its shoe products as are not, in fact, provided with an arch or shank of the type indicated. (May 3, 1943.)

3646. Feathers—Old or Second-hand as New.—International Products Co., Inc., a corporation, engaged in the operation of a processing plant by means of which feathers collected from numerous sources are segregated, cleaned, and repacked and thereafter sold by said corporation in interstate commerce, in competition with other corporations and with individuals and concerns also engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

International Products Co., Inc., in connection with the advertisement, offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Representing, by inference or implication or otherwise, that said products are new, when in fact, they are, either in whole or in part, old or second-hand or have been previously used.

2. Failing to clearly and unequivocally disclose that said products are composed, either in whole or in part as the case may be, of used or second-hand materials. (May 3, 1943.)

3647. **Stapling Machines—Qualities, Properties, or Results.**—Ace Fastener Corporation, a corporation, engaged in the business of manufacturing stapling machines and staples to be used therewith, and in the sale and distribution of said products 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.

Ace Fastener Corporation, in connection with the sale and distribution of its stapling products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from representing, either directly or inferentially, that its stapling machines will give perfect stapling satisfaction for 10 years, or for any indicated period of time, that they will never jam or clog, or that they are proof against or immune to jamming or clogging. (May 3, 1943.)

3648. **Vitamin Capsules—Scientific or Relevant Facts, Ailments and Qualities, Properties or Results.**—Associated Laboratories, Inc., a corporation engaged under the trade name "Vitamin-Quota," in the sale, in interstate commerce, of multi-vitamin concentrates, in capsule form, for use as a supplement to ordinary diets, 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.

Associated Laboratories, Inc., trading as "Vitamin-Quota," or under its corporate name, or any other name or names agreed that, in connection with the conduct of its business as aforesaid, it will cease and desist forthwith from disseminating any advertising or printed matter, or causing the same to be disseminated by United States mails, or otherwise in commerce, as commerce is defined by the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of the products, and which advertising or printed matter represents, either directly or inferentially,

1. That it is impossible or extremely difficult to obtain an adequate intake of vitamins from ordinary foods

2. That conditions such as vague aches and pains, weakness, fatigue, nervousness, lack of resistance to colds, a worn-out feeling, poor appetite, poor digestion, lack of vigor and energy are necessarily symptomatic of vitamin deficiencies.

3. That the ingestion of Vitamin-Quota capsules will relieve, remedy or correct the aforesaid conditions.

4. That the ingestion of said capsules will result in a superior state of health. (May 7, 1943.)

3649. Shoes—Foreign Origin, "Bench Made," "Hand Made," Doctor's Supervision, Etc.—A. Freedman & Sons, Inc., a corporation, engaged in the business of manufacturing shoes and in the sale and shipment thereof 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.

A. Freedman & Sons, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its domestically made shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith:

1. From the use, as a mark, stamp, brand, or label, for, or to otherwise advertise said products, of the word "Lloyd" or the words "London Boot Shop," or any other word or words or picturization customarily associated with the British Isles, or any foreign country, so as to import or imply or the effect of which tends or may tend to cause or convey the belief or impression to purchasers or prospective purchasers that the products, with reference to which such words or picturization are descriptively used, are of British or an indicated foreign origin.

2. From the use of the words "bench made" or "handmade" as descriptive of products which are not made on a bench or by hand, or as descriptive of machine-made products.

3. From the use of the word "customized," or of any other word of similar import, either alone or in connection with any picturization, or in any other way, as descriptive of or in referring to such of said products as are not, in fact, made or done to order of an indicated person or concern.

4. From the use of the word "doctor" or the abbreviation "Dr.," either alone or in connection with a name or with the word "health" or "comfort" or with any other word or words, as a trade name, stamp, brand, or designation for its products, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief or impression to purchasers or prospective purchasers that the said products have been made in accordance with the design or under the supervision of a physician and/or that they contain special scientific, orthopedic, health, or comfort features which are the result of medical determination or services. (May 10, 1943.)

3650. *Cosmetic Preparations—History, New, Unique, Qualities, Properties or Results, Comparative Merits, Etc.*—Kay Preparations Co., Inc., a corporation, engaged in the sale and distribution of cosmetic preparations in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kay Preparations Co., Inc., in connection with the offering for sale, sale, or distribution of its products in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed forthwith to cease and desist from representing, directly or inferentially:

(a) That Formula 301 is not a cosmetic or not just another preparation; is a scientific formula or a scientific discovery for correction of beauty imperfections; or is new, unique, or magical in properties or amazingly effective or miraculous in production of results claimed for it.

(b) By statement or implication, that Formula 301 or any similar preparation is a competent, effective, or reliable treatment or remedy for acne, pimples, enlarged pores, oiliness, or eruptions, whether due to surface-skin disorders or to systemic causes; or by the unqualified use of the word "blemishes," that it is efficacious or effective in the removal or elimination of moles, verrucae, birthmarks, hair, or other imperfections marring the appearance of the skin, or will cover up blemishes other than those of a minor sort.

(c) That Formula 301 or any similar preparation works "fast," or at all, underneath the make-up, to clear the skin; acts scientifically to produce a clear skin free of pimples, acne, blackheads, or large pores; draws to the surface concealed pimples, blackheads, or other minor skin eruptions; causes disappearance of discoloration or oiliness, blemishes, or pimples, "as if by magic," or otherwise; or smooths away wrinkles.

(d) That said Formula 301 or any similar preparation gives the complexion a fresh, vital appearance; leaves the complexion smooth, soft and healthy, smooth or soft as a baby's skin, or smoother and softer than ever before; or makes a woman 59 years old look like a girl of 25.

(e) That said preparation helps, aids, or assists, at once, with the first application, or in any appreciable degree, to—

Restore natural loveliness and charm to the complexion.

Free the skin from impurities.

Eliminate unsightly blemishes.

Remove surface-skin blemishes.

Clear, correct, or beautify blemished complexions.

Keep blemishes from recurring.

Hasten the clearing of surface pimples, blemishes, eruptions, or oily skin.

Attain the vibrant, clear, fresh, vital-looking kind of face that does so much to win admiration and make friends, or the smooth, clear, vibrant skin you envy in others.

(f) That "no matter how bad your face may look now," amazing results are assured or may be anticipated within 2 weeks by using said preparation; or, no matter how much trouble one has had or how many preparations have failed, Formula 301, may be depended or relied upon to produce the clear, fresh, glamorous, complexion longed for.

(g) That in 1 to 5 days, in 5 days, or within any specified time, said preparation banishes pimples, blackheads, eruptions, or enlarged pores; makes pores smaller, causes pimples to go, makes the face smoother; clears up the face immediately; or starts the user well on the road to the fresh, clear, smooth, radiant complexion that wins admiration.

(h) That the use of said preparation accomplishes more in 5 days than does 5 years of medical treatment, or more in 4½ days than has 10 years of other treatments and remedies.

(i) That said preparation will clear up bad skin between Monday and Saturday, or by the use of depictions or other contrivances, that with the application of Formula 301 an unsightly skin becomes in fact beautiful and attractive within such period of time, or at all.

(j) By the use of expressions such as "Exit Pimples," "Goodbye to ugly blemished skin," "Enjoy Popularity—Romance—Success with clear complexion loveliness," or words or statements of like import, that such results are attainable or may be achieved by means of the cosmetic preparation known as Formula 301.

(k) That Formula 301A, heretofore offered for sale and sold as "Kay Special Sulphur Skin Soap," is a "Pure Sulphur" soap or that it is more effective than other standard facial soaps in preventing rancidity or oil or eruptions in the skin; or that ordinary soap and water cleanliness is not enough for excessive oiliness that tends to cause blemishes or eruptions.

Kay Preparations Co., Inc., agreed also to cease and desist from:

(l) The use of the words "Special sulphur" as a part of the trade designation for or as descriptive of said Formula 301A or any preparation of similar composition.

(m) The use of the term "dermatician" or similar designation as applied to a cosmetician or beautician not in fact a dermatologist; or of expressions such as "world famous," "world famed," or "one of

the world's famous," as descriptive of a person lacking in world-wide celebrity and renown.

(n) The use of testimonials containing any statement, assertion or implication contrary to the terms and spirit of this agreement. (May 11, 1943.)

3651. **Automobile Tires and Tubes—Manufacturer, Qualities, Properties or Results, Comparative Merits, Value, Etc.**—Hicks Rubber Co., also trading as Star Rubber Co., a corporation, located in Waco, Tex.; Milt Goldbacher, an individual, residing in or adjacent to Browns Mills, N. J., a sales agent of the aforesaid Hicks Rubber Co.; said corporation and individual engaged in the sale and distribution of automobile tires and tubes in interstate commerce, in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Hicks Rubber Co., whether trading as Star Rubber Co., or under any other name or names, and Milt Goldbacher, in connection with the sale and distribution of automobile tires and tubes in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing that said corporation makes or manufactures merchandise offered for sale or sold by it, unless and until it actually owns and operates, or directly and absolutely controls a plant or factory wherein is made any and all products sold or offered for sale by them under such representations.

(b) Representing that said tires will deliver 60 percent or 40 to 50 percent more miles or service than competitive products generally, that the cord contained therein is 300 percent tougher than rayon cord, that the side walls thereof are 10 to 11 times deeper with rubber than are any other tires, or that they have approximately 55 percent rubber under the non-skid as compared to 11 to 18 percent on the ordinary tires; and from any comparative statement or other representation the effect of which tends or may tend to convey the belief or impression that the service to be obtained from such tires is in excess of the service they actually will render, that the cord contained therein is any tougher or stronger than is actually a fact, or that the rubber on the side walls or tread thereof is any deeper or thicker than is actually a fact.

(c) The use of any statement or representation the effect of which tends or may tend to convey the belief or impression that the value of such tires is 22 percent greater than that of any other tire in America, or that the value or worth thereof is in excess of their actual or true value.

(d) Representing that said tires may be run from morning until night or for long or extended periods of time without heating.

(e) Representing, directly or inferentially, that such tires can be depended upon safely and efficiently to carry a $37\frac{1}{2}$ percent greater pay load than all other tires of comparable size; or that they can be depended upon to render satisfactory service under any load condition in excess of that for which they are constructed.

(f) The use of photostatic copies of purchase orders that have been so altered as to indicate sales in excess of actual sales; or the use of any writing, copy or representation in any manner the effect of which tends or may tend to mislead or deceive the purchasing public in any material respect with reference to the nature or character of their business. (May 14, 1943.)

3652. **Fingernail Preparation — Qualities, Properties, or Results.**—Flamingo Sales Co., a corporation, engaged in the sale of fingernail preparations, which since the fore part of 1940, have included a lacquer or varnish called "Seal-Cote" and which the said corporation has offered for sale and sold, under its adopted trade name "Seal-Cote Company," in interstate commerce, in competition with other corporations and with individuals and concerns likewise engaged; Milton Weinberg Advertising Co. is the trade name under which Bernard Weinberg conducted, for some time, an advertising business at Los Angeles, Calif., in connection with his brother, Milton Weinberg, now deceased, as the advertising representative of Flamingo Sales Co., aforesaid, and, as such, prepared and aided in the preparation of advertising material used by Flamingo Sales Co., including advertising matter hereinafter set forth in connection with the sale and distribution of the cosmetic preparations hereinbefore designated. Flamingo Sales Co. entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce, as set forth therein.

Flamingo Sales Co., a corporation, and Bernard Weinberg, an individual trading as Milton Weinberg Advertising Co., agreed, the said corporation, and the said individual, to cease and desist forthwith:

From disseminating any advertising or printed matter, or causing the same to be disseminated, or placing in the hands of others for dissemination, by means of the United States mails, or otherwise in commerce as defined by the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of the preparation called "Seal-Cote" or by any other name, or from disseminating any advertising or printed matter, or causing the same to be disseminated, or placed in the hands of others for dissemination, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as

defined by the Federal Trade Commission Act, of said preparation, which advertising or printed matter represents, either directly or inferentially, that the use of said preparation on nails will cause such nails to grow longer, or will aid their natural growth, or will have any influence whatsoever upon growth of the nails, or that the use of the preparation will correct or prevent splitting or breaking of the nails. (May 14, 1943.)

3653. Men's Neckwear—Quality and Composition.—A. Schreter & Sons, Inc., a corporation, engaged in the sale and distribution of men's neckwear 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.

A. Schreter & Sons, Inc., in connection with the sale and distribution of its neckwear in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the figure and word "4 FOLD" or other figure, word or term of like meaning on labels, tags, brands, or other advertising media as a designation for, as descriptive of or in referring to any article of neckwear that is not in fact of fourfold construction; and from any representation the effect of which tends or may tend to convey the belief or impression that such article is of fourfold construction.

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale any product in whole or in part of rayon without clearly disclosing by the use of the word "rayon," the fact that such product is composed of or contains rayon; and, when a product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber, in the order of its predominance by weight, beginning with the largest single constituent, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon." (May 14, 1943.)

3654. Patriotic Stamp, Fountain Pens, and Billfolds—Free Product, Maker, Guarantee, Price, Composition, and "Hand Tooled."—Willens Co., Inc., a corporation, engaged in the printing of so-called patriotic stamps and in the sale thereof under its adopted trade name "Patriotic Stamp Company" 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.

Willens Co., Inc., whether trading under its corporate name or as Patriotic Stamp Company, or under any other name, in connection with the 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:

1. The use of the word "free," or other term or expression of like meaning, as descriptive of or in referring to a product, when such product is not given as a gratuity, but the recipient thereof is required to pay, either in whole or in part, the purchase price thereof, to purchase some other article, or to render some service in order to obtain the same;

2. The use of the word or name "Waltham" as a brand name or label for its pens, and from the use of the said word in any way, in referring to its pen products, the effect of which tends or may tend to cause or convey the impression or belief that said products have been manufactured by Waltham Watch Co., a manufacturer of watches known and recognized throughout the United States of America and in foreign countries.

3. The use of the expression "Guarantee of a lifetime," "service guarantee by the manufacturer to keep it in good working condition for the entire life of the user," or any other statement of similar implication, so as to import or imply or which tends or may tend to create the belief that the said pens are of a quality in excess of what they actually possess.

4. Representing that its so-called Waltham pens are of such values as customarily retail at from \$2 to \$5 or for any other amount which is fictitious or in excess of the price customarily asked for said pens or for pens of comparable value in the usual course of retail trade.

5. The use of the words "genuine leather" as descriptive of billfolds which are not made wholly from leather, and from the use of the words "genuine leather," or the word "leather," either alone or in connection or conjunction with any other word or words, so as to import or imply or which may cause or tend to cause the impression or belief that said billfolds are made or manufactured wholly from leather, that is, the top grain or cut or layer of the hide of an animal. If the billfold is composed in part of leather made from the top grain or cut or layer of the hide, and in part of other material, and the words "genuine leather" or the word "leather" be used as descriptive of such leather part, then in such case, said word or words shall be immediately accompanied by some other word or words so as to indicate clearly that the billfold is not made wholly from top grain leather. If the billfold is composed in part of leather made from the inner or flesh cut of the hide, and the word "leather" is used as descriptive thereof, then in that event, the word "leather" shall be immediately accompanied by some other word or words, as "split," printed in equally conspicuous type so as to indicate clearly the nature of the leather from which such part is made.

6. From the use of the words "hand tooled," or any other word or words of similar import, as descriptive of billfolds, or other articles, which are not tooled by hand. (May 14, 1943.)

3655. **Paint Brushes—Composition.**—Pitegoff Brothers, Inc., a corporation, engaged for a considerable number of years last past in the business of manufacturing paint brushes, and in the sale thereof, under the brand name or designation "Sumner," 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.

Pitegoff Brothers, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its paint brushes designated "Sumner" or by any other brand name, in commerce as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "mixed bristle and horsehair" as descriptive of the brushing part of said brushes, and from the use of the words "bristle and horsehair" either alone or in connection with any other word or words, so as to import or imply, or the effect of which tends or may tend to cause or convey the impression or belief that the brushing part of said brushes is composed wholly of the named materials. If the brushing part of said brushes contains bristles and horsehair, each in substantial part, and also some other material or materials, and the words "bristle and horsehair" are used to describe such content, then in that case, the said words shall be immediately accompanied by some explanatory term or phrase printed in equally conspicuous type so as to disclose clearly and unequivocally that the brushing part of the brushes is not composed wholly of bristles and horsehair. Such disclosure should be made by branding, stamping, or otherwise marking the handle or ferrule of the brush with the name of each of the constituent materials of the brushing part thereof in the order of its predominance. (May 14, 1943.)

3656. **Medicinal Preparations—Unique, New, Comparative Treatments, Scientific or Relevant Facts, Safety, Etc.**—Western Medical Corporation, a corporation, engaged in the mail order sale and distribution, in interstate commerce of medicinal preparations offered as treatments for convulsive seizures commonly known as epilepsy. It has in its employ a Dr. Harry L. James who, together with two assisting physicians, after professional consideration of the answers supplied in a case history questionnaire filled out by the prospective patient, prescribes an individual treatment, this being followed by periodic reports from the patient as the case develops, in the light of which changes in prescriptions and dosages frequently are made. Said corporation, causing its preparations, when thus sold, to be shipped 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 as set forth therein.

Western Medical Corporation, in connection with the offering for sale, sale, and distribution of its medicinal preparations in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by means or in the manner set forth in the stipulation, agreed it will forthwith cease and desist from representing, directly or inferentially:

(a) That the method of treatment which it offers for epilepsy is "so different" or otherwise new or uncommon; that the methods followed in general are "old-fashioned" and not up to date; by assertion or implication, that the usual treatment is with "only one kind of medicine," no attention being given by the physician to the patient's general condition; or that the prospective purchaser has "very likely" been using a medicine that does no more than hold down attacks.

(b) That its method of treatment will "do something more" than simply hold down the attacks of epilepsy, in any manner importing, implying or conveying the impression that it may be expected to reach and treat the underlying causes thereof.

(c) By statement, implication, or otherwise, that the causes of epilepsy are usually known to the respondent's physicians; that in general, such causes are inherited bodily weaknesses from ancestral disorders or diseases, injury, fright, overstudy, or a permanent weakening of the system by afflictions such as spinal meningitis, typhoid, influenza, and pneumonia, or by connotation, passing reference or cursory mention, that the proportion of unknown causes is but incidental or of minor importance.

(d) That deficient blood circulation is or has been found by medical science to be a contributing cause of epilepsy seizures hard or slight; or that the medicines used by it are competent treatments or effective remedies for deficient blood circulation or consequently, for a cause of epilepsy.

(e) That intestinal putrefaction contributes or may contribute to epilepsy seizures, leads to various disturbances in the system, or is the source of disorders having an important bearing upon the general health; or by any means of presentation, that the laxative medicines prescribed will have significant effect on either the direct or the contributing causes of epilepsy.

(f) Directly or by implication, that stimulation of "certain glands" in the body has or may have remedial effect on the cause or contributing causes of epilepsy attacks; or that the medicines used in its treatment do stimulate the internal secretion glands or thereby treat the cause of epilepsy.

(g) That improvement of the general physical condition has or may have any ascertainable effect on epilepsy seizures or their causes; that the normal functioning of the general systemic condition has an "im-

portant bearing" in the warding off or correction of epilepsy; or that its medicines constitute competent treatments for the general physical condition or to normalize the systemic functioning of the body.

(h) That from written answers to questionnaires, it does or can obtain substantially "complete" information for the adequate and effective treatment of a case of epilepsy; or that its mail order treatment is "perhaps even better" than would be a treatment following personal interviews with its physicians.

Western Medical Corporation also agreed to cease and desist from:

(i) Disseminating any advertisement or trade literature pertaining to its mail order treatments where the preparations used in such medication contain:

1. Thyroid extract, which fails clearly to reveal that said ingredient is a powerful and dangerous drug which attacks, oxidizes, or burns bodily tissues, is apt to be and frequently is harmful to the health of the user, and that the preparation including such drug may be safely taken only on prescription after an examination by a competent physician.

2. A laxative, which fails clearly to reveal the potential danger thereof in the presence of nausea, vomiting, abdominal pain, or other symptoms of appendicitis.

3. A bromide, which fails clearly to reveal that the preparation of which it is a part should not be used in excess of the dosage recommended, that such excessive use may be dangerous, causing skin eruptions, mental derangement, and should not be taken by or administered to children.

4. Zinc phosphide, which fails clearly to reveal that said ingredient may produce phosphorus poisoning, to which the liver and lower jaw are especially susceptible.

5. Phenobarbital, which fails clearly to reveal that said ingredient may be habit-forming.

Provided, however, That if directions for use of each of said preparations, whether appearing on its label, in the labeling, or in both label and labeling, contain adequate and specific warnings of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: CAUTION, Use Only as Directed. (May 18, 1943.)

3657. Publications—Identity, Qualities, Properties or Results, Unique, Prices, Success, Use or Standing, Time in Business, Etc.—The Paebur Co., Inc., a corporation, located in the city and State of New York, at the same address as Alan F. Pater, also of New York, who is the principal stockholder thereof and exercises personal control over its business; said Alan F. Pater, also sole trader, operating variously as The

Paear Co., Literary Publications, Who's Who Publishing Co., Columbia Book Publishing Co., and Judicial Publishing Co.; Alan F. Pater, and The Paear Co., Inc., engaged in the publication, sale, and distribution of books in interstate commerce, in competition with other corporations, individuals and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The designation or legend "We, the People" is widely known by the American public as the title of a certain radio entertainment program sponsored by national advertisers. For more than 40 years there has been published and distributed by The A. N. Marquis Co. a biennial volume of biographical data concerning thousands of persons notable in the fields of letters, education, business and public affairs, entitled "Who's Who in America."

The Paear Co., Inc., and Alan F. Pater, and each of them, in connection with their sale and distribution of publications in commerce as defined by the Federal Trade Commission Act, whether operating as The Paear Co., Inc., Alan F. Pater, The Paear Co., Literary Publications, Who's Who Publishing Co., Columbia Book Publishing Co., Judicial Publishing Co., or under any other name, style, or appellation, they agreed forthwith to cease and desist from:

(a) The use, as a designation for their publications or as a trade name for their business, of the words "We, the People" or "Who's Who Publishing Company"; and from the use of such words or others of like import in any manner having the capacity, tendency, or effect of causing or conveying the impression or belief that their publications are sponsored by or in any way associated with the business transactions or commercial enterprises engaged in by other concerns using or publicizing such designations, names, or legends.

(b) The use, in describing their volume heretofore designated "We, The People," of exaggerated and unduly extravagant statements to the effect that it includes the "quintessential elements of the year's written expressions," connoting the most typical, representative and consummate achievements of all opinions published during the year; that the contents of the volume speak "the authoritative voice of the people," will "encourage study" or furnish the necessary information for general readers who otherwise "could not keep posted during the year"; that the printed article by the prospective customer has been selected because it "voices an opinion of vital public interest," is "outstanding" among all expressions that have appeared throughout the United States and Canada, or constitutes "a segment of contemporary history."

(c) Representing as the regular retail price of the book, a price in excess of that for which it is ordinarily and usually sold; that

such usual price is a "special contributor's price"; that reservations must or should be made at once for a first-press copy; that any edition of said yearbook has ever been oversubscribed; or that many would-be subscribers have been disappointed because their reservations arrived too late.

(d) Either directly or inferentially representing that said yearbook has a wide or extensive general circulation, bringing the prospective purchasers' message to many thousands of persons everywhere in the country; or that it has any recognized circulation whatsoever except to the contributors whose names appear therein.

(e) Contacting a prospective purchaser of their book by means of statements to the effect that an article written by him has "been selected to appear" in the forthcoming issue of the volume, that "it will contain your contribution in permanent form," that the new edition "will go to press soon"; or by any other assertion or implication, prior to his subscription, that the solicitee's article will be published either as an assured fact or at an early date.

(f) Soliciting subscriptions or payments for their book to be composed of contributions furnished by the purchasers without definitely and unambiguously setting forth in the first communication with such prospective purchaser, also in all follow-up communications prior to receipt of his subscription, all the conditions and circumstances under which both his contribution and his subscription will actually be accepted or received; for example, that such article may not be published at all, that the order may not be canceled for that reason, that the contributed article may be revised or abridged without recourse, and that the date of publication is indefinite, necessitating a delay of months, perhaps as much as a year.

(g) Unwarranted or unreasonable delay in making refunds of the purchase price to dissatisfied subscribers.

(h) The use, in their trade literature or otherwise, of misleading dates as to the founding of their annual publications or of their business, indicating a longer existence of said enterprise than is a fact, or having the capacity or tendency to create erroneous impressions or beliefs by purchasers concerning its established background and repute. (May 18, 1943.)

3658. **Canvas Goods—Size of Product.**—Crawford Manufacturing Co., Inc., a corporation, engaged in the sale and distribution of canvas goods including tarpaulins, or canvas coverings, 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.

Crawford Manufacturing Co., Inc., in connection with the sale and distribution of tarpaulins, or canvas coverings, in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of any label, brand, tag, advertisement, writing, or representation purporting to designate or indicate the size or dimensions of any such products that does not clearly, definitely, and unambiguously set forth the finished size, that is, the dimensions of the product as offered for sale and, in addition thereto, in equally conspicuous type and in immediate connection or conjunction therewith, the so-called cut-size, that is, the dimensions of the fabric of which the product was made. (May 27, 1943.)

3659. Canvas Goods—Size of Product.—Crawford-Austin Manufacturing Co., a corporation, engaged in the sale and distribution of canvas goods including tarpaulins, or canvas coverings, 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.

Crawford-Austin Manufacturing Co., in connection with the sale and distribution of tarpaulins, or canvas coverings, in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of any label, brand, tag, advertisement, writing, or representation purporting to designate or indicate the size or dimensions of any such products that does not clearly, definitely, and unambiguously set forth the finished size, that is, the dimensions of the product as offered for sale and, in addition thereto, in equally conspicuous type and in immediate connection or conjunction therewith, the so-called cut-size, that is, the dimensions of the fabric of which the product was made. (May 27, 1943.)

3660. Canvas Goods—Size of Product.—V. M. Goldberg, R. P. Goldberg, B. P. Goldberg, F. D. Goldberg, and W. H. Goldberg, copartners, trading as Hoosier Tarpaulin & Canvas Goods Co., engaged in the sale and distribution of canvas goods including tarpaulins, or canvas coverings, in interstate commerce in competition with other partnerships and with corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

V. M. Goldberg, R. P. Goldberg, B. P. Goldberg, F. D. Goldberg, and W. H. Goldberg, and each of them, whether trading as Hoosier Tarpaulin & Canvas Goods Co., or under any other name or names, in connection with the sale and distribution of tarpaulins, or canvas coverings, in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of any label,

brand, tag, advertisement, writing, or representation purporting to designate or indicate the size or dimensions of any such products that does not clearly, definitely, and unambiguously set forth the finished size, that is, the dimensions of the product as offered for sale and, in addition thereto, in equally conspicuous type and in immediate connection or conjunction therewith, the so-called cut-size, that is, the dimensions of the fabric of which the product was made. (May 27, 1943.)

3661. **Canvas Goods—Size of Product.**—Fulton Bag & Cotton Mills, a corporation, engaged in the sale and distribution of canvas goods including tarpaulins, or canvas coverings, 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.

Fulton Bag & Cotton Mills, in connection with the sale and distribution of tarpaulins, or canvas coverings, in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of any label, brand, tag, advertisement, writing, or representation purporting to designate or indicate the size or dimensions of any such products that does not clearly, definitely, and unambiguously set forth the finished size, that is, the dimensions of the product as offered for sale and, in addition thereto, in equally conspicuous type and in immediate connection or conjunction therewith, the so-called cut-size, that is, the dimensions of the fabric of which the product was made. (May 27, 1943.)

3662. **Canvas Goods—Size of Product.**—A. T. Clifton and A. L. Clifton, copartners, trading as Clifton Manufacturing Co., engaged in the sale and distribution of canvas goods including tarpaulins, or canvas coverings, in interstate commerce, in competition with other partnerships and with corporations, individuals, and concerns likewise engaged, entered into the following agreements to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. T. Clifton and A. L. Clifton and each of them, whether trading as Clifton Manufacturing Co. or under any other name or names, in connection with the sale and distribution of tarpaulins, or canvas coverings, in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of any label, brand, tag, advertisement, writing, or representation purporting to designate or indicate the size or dimensions of any such products that does not clearly, definitely and unambiguously set forth the finished size, that is, the dimensions of the product as offered for sale and, in addition thereto, in equally conspicuous type and in immediate connection or conjunction therewith, the so-called cut-size, that is, the dimensions of the fabric of which the product was made. (May 27, 1943.)

3663. "Cleanette"—Qualities, Properties or Results and "Makers."—Claude C. Frantz, an individual trading as Cleanette Products Co., engaged in the business of selling in interstate commerce a product called "Cleanette," alleged to be a petroleum distillate of a naphtha compound prepared for him by National Solvent Corporation; the said Claude C. Frantz caused said product, when sold, to be shipped by the said corporation in containers furnished and labeled by it, from its place of business in Cleveland, Ohio, to purchasers, as department and hardware stores, located in other States and there engaged in the sale of said product to consumers. The said individual and the said corporation, thus cooperatively engaged in the sale and distribution of said product in commerce, as commerce is defined by the Federal Trade Commission Act, in competition with other individuals, corporations, and concerns also engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Claude C. Frantz, an individual trading as Cleanette Products Co., or under any other name, and National Solvent Corporation, a corporation, in connection with the offering for sale, sale, or distribution of the product designated "Cleanette" 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 "Moth Preventative" or the words "keep out moths" as descriptive of said product, and from the use of said words, or any other words of similar import, the effect of which tends or may tend to cause or convey the impression or belief to purchasers or prospective purchasers that a fabric which has been treated with said product will repel or is rendered immune to or proof against subsequent attacks of moths.

2. Stating or representing that moth attacks can be avoided or prevented by keeping a fabric free from grease spots.

3. The use of the words "Revitalizes All Fabrics" or of any other words of similar meaning, in referring to said product, so as to import or imply or the effect of which tends or may tend to cause purchasers to believe that said product will have the effect of imparting new life to a fabric treated therewith.

The aforesaid Claude C. Frantz also agreed to cease and desist from the use on his letterheads or on any of his printed or advertising matter of the words "makers of" a designated product or products which he does not manufacture, and from the use of the word "makers," or of any other word or words of similar meaning or import, the effect of which tends or may tend to convey the belief that the said individual, trading as Cleanette Products Co., actually owns and operates or directly and absolutely controls the plant or factory in

which said product or products is or are made or manufactured. (May 28, 1943.)

3664. Phonograph Needles—Qualities, Properties or Results and Individual Being Corporation.—Peter Grey, an individual trading both under his own name and as Peter Grey's Laboratories, also has used the trade name Peter Grey, Inc., in the conduct of his business activities in Oakland, Calif., engaged in the sale and distribution of phonograph needles in interstate commerce, in competition with other individuals and with corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Peter Grey, an individual, whether trading under his own name or under any trade name, in connection with the offering for sale, sale, or distribution of his "Kacti" phonograph needles in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from using, in his printed or advertising matter of whatever kind or description, or in any other way, any statement, claim or representation, the effect of which conveys, tends, or may tend to convey the impression or belief that the use of the said "Kacti" needles, in the playing of phonograph records, will

1. Cause the records to last forever.
2. Cause the records to improve each month of their use.
3. Cause a restoration of records whose sound-vibration mechanism has become damaged, as by wear, through use of metallic, or other, needles.
4. Meet all the requirements of the electric pick-up, as alleged.
5. Supply all the contributing factors necessary to assure "perfect reproduction" or reproduction "such as each artist intended."

Peter Grey also agreed to cease and desist from the use of the words "Peter Grey, Inc." as a trade name under which to conduct his business as an individual; and from the use of the said words in any way in connection with his business so as to import or imply or which may cause the belief that the enterprise conducted by the said individual is that of a corporation. (May 28, 1943.)

3665. Men's Shirts—"Custom Made."—Berthold Klein is an individual trading as United Textile & Silk Co., engaged in the sale and distribution of men's shirts in interstate commerce, in competition with other individuals and with corporations or 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.

Berthold Klein, whether trading as an individual, as United Textile & Silk Co. or under any other name or names, in connection with the

sale and distribution of ready-made shirts in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the words "custom made" or other words or phrases of like meaning as a designation for, as descriptive of or in referring to such products; and from any representation the effect of which tends or may tend to convey the belief or impression that such shirts are custom-made, made to order, or made to measure or that they are other than ready-made shirts. (May 28, 1943.)

3666. **Fur Coats and Garments—Nature.**—Bloomingdale Brothers, Inc., a corporation, engaged in the sale and distribution in interstate commerce of merchandise including fur coats, in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Bloomingdale Brothers, 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 use of the words "Persian lamb" or "Persian" as a designation for or as descriptive of coats or garments made of or manufactured from the peltries of Shiraz lambs or from any peltries other than those of true or pure breed Persian lambs; and from advertising, offering for sale, selling, branding, or otherwise representing fur or furs as the product of a true species or breed of animals, unless such fur in fact has been obtained from a true species or breed of animals. (June 2, 1943.)

3667. **"Handy Radio"—Qualities, Properties or Results, Etc.**—Kumfy Products, Inc., a corporation, engaged in the manufacture of a crystal set and in the sale thereof, under the trade name or designation "Handy Radio," 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.

Kumfy Products, Inc. in connection with the advertisement, offering for sale, sale, or distribution of the devices called "Handy Radio" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from stating or representing, as through the use of the term "Built-in speaker," or in any other way, that the said devices will provide sound sufficient in volume for an ordinary room, as do built-in speakers in modern radios, or that the reception of which said devices are capable of providing is in excess of what is actually the fact; that said devices will enable all standard broadcast programs to be tuned in on easily or accurately,

or to be received from distant stations or, in fact, from all local stations; that it will operate or function everywhere; or that it is of any designated size contrary to facts. (June 2, 1943.)

3668. **Language Teaching Method—Qualities, Properties or Results, Comparative Merits and Testimonials.**—Funk & Wagnalls Co., a corporation, engaged in the publication of books and educational courses and in the sale and distribution thereof in interstate commerce, in competition with other corporations, persons, 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.

Funk & Wagnalls Co., in connection with its sale and distribution of the Languagephone method or of any other language teaching method, in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing directly or inferentially that, by the use thereof, a person will be enabled to, or may confidently expect to think in a foreign language within a few days; may learn or master such language within 60 to 90 days by a study period of 15 minutes a day, or less time with longer study periods; or that such method of instruction is more efficient than years spent in the foreign country where such language is spoken; or otherwise, by words or expressions of like import, overstating or exaggerating the efficiency of such means of instruction or the results to be obtained by the average student using such method.

Funk & Wagnalls Co. also agreed not to publish any testimonials containing statements contrary to the terms and spirit of the foregoing agreement. (June 2, 1943.)

3669. **"Sun Lamps"—Qualities, Properties or Results, Comparative Merits, Competitive Products and Safety.**—Ultra Violet Ray Laboratories, Inc., a corporation, is engaged in the business of manufacturing two so-called "Supertan Ultra-Violet Ray Sun Lamps" of the carbon arc type which are essentially of the same construction, except that one of the two models is more powerful, being constructed with a double carbon arc, whereas the other is equipped with a single carbon arc. The said corporation having sold said devices in interstate commerce to purchasing dealers engaged in the sale of the devices to lay customers, many of whom make use thereof as means to administer self-treatment at home, in competition with other corporations, and with individuals and concerns likewise engaged, entered into the following agreement to cease and desist from the unfair methods of competition as set forth therein.

Ultra Violet Ray Laboratories, Inc., agreed it will cease and desist from disseminating any advertising or printed matter, or causing the same to be disseminated, or placed in the hands of others for dis-

semination, by United States mails, or otherwise in commerce, as commerce is defined by the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of the aforesaid lamp devices manufactured by it, and which advertising or printed matter represents, either directly or inferentially, that said devices are sun lamps; that the radiation produced by said lamps, or either thereof, is "the same as in natural sunlight," that is, an exact match or duplicate of the sun's rays, or that it produces an approximation of solar radiation, that it would have the effect of summer sunshine, or offer the healthful benefits of a Florida vacation; that a report on carbon arc lamps by the United States Bureau of Standards offers verification of the claim by said corporation that the "Supertan Sun Lamps produce the closest duplication of Natural Sunshine of any known artificial source of energy"; that lamps competitively sold on the market, which do not possess the three types of radiation (ultraviolet, visible, and infrared), are not acceptable for the purposes for which they properly are sold; that the radiation produced by the "Supertan Sun Lamps" would be of benefit to "rashy, pimply skins," or that it would be beneficial, except as an adjunct to other remedial measures, in certain forms of anemia, deficiency diseases due to lack of vitamins except Vitamin D, tuberculosis of bones, joints, and glands, sinus infections, ulcers, wounds, congestion, sore throat, tonsillitis, neuritis, and certain skin diseases; that the radiation produced by said lamp could be depended upon to impart health, vigor, energy, or vitality to users thereof, or to protect against colds or other winter ailments; or would be of appreciable value as a treatment in mental ailments. Said corporation also agreed to cease and desist from disseminating or causing to be disseminated any advertisement, pertaining to said lamps, that fails to reveal the potentialities for injury to the user, in that excessive exposure to the lamp, either with respect to proximity or length of time, may result in severe erythema (sunburn), and that said lamp should not be used in cases of pellagra, lupus erythematosus, certain types of eczema, burns, and sunburn, and that said lamps should never be used unless goggles are worn to protect the eyes: *Provided, however*, That if the directions for the use of such lamps appear on the label, in the labeling, or in both label and labeling, and contain an adequate warning of potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: **CAUTION, Use Only as Directed.** (June 10, 1943.)

3670. Lotion and Corn Remedy—Qualities, Properties or Results.—John H. Bevill, an individual trading as I. L. Bevill Co., engaged in the manufacture of two preparations, one designated "Bevill's Lotion" and the other "Bevill's Corn Remedy," in interstate commerce, in

competition with other individuals, and with corporations and other concerns also engaged in commerce of preparations designed for similar use, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

John H. Bevill, in connection with the sale and distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of the preparations designated "Bevill's Lotion" and "Bevill's Corn Remedy" or any other preparations composed of substantially the same ingredients, or possessing substantially the same properties, whether sold under such names, or any other names, agreed he will cease and desist forthwith from representing, directly or inferentially:

1. That the use of the said lotion would rid, cure, heal, or relieve Athlete's Foot in 2 days; that it would relieve all types of eczema; that it would be an effective treatment for skin diseases resulting from bacteria or parasites, or for other conditions, such as acne, pimples, breaking-outs, new and old sores, and all disturbances affecting the skin.

2. That the use of the said so-called corn remedy would be an effective treatment for bunions or ingrowing nails, or would rid one of corns in from 1 to 5 days. (June 14, 1943.)

3671. Home Study Courses of Instruction—Employment and Government Approval or Endorsement.—Airport Management, Inc., a corporation, engaged in conducting a resident school where training is offered in various branches of aviation and also in publishing home study courses involving mechanics and other subjects associated with the aircraft industry as a supplement to its resident school, causing same to be sold 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.

Airport Management, Inc., whether trading as Western Air College, Western Airport College Co., Western Welding Institute, or under any other name, in connection with the offering for sale, sale, or distribution of its home study courses of instruction in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from:

1. Advertising its courses of study under the classification "Help wanted," or any other employment column of publications, so as to import or imply or the effect of which tends or may tend to convey the impression or belief that the said corporation has positions or jobs open and available, when in fact, the purpose of said advertising is only to enroll students for instructional courses.

2. The statement "United States Government Approved" or "Government Approved" or any other statement of similar meaning or im-

port, in referring to said home study courses, the effect of which tends or may tend to cause the belief that the home study courses offered by the said corporation have been approved or endorsed by the United States Government or by any branch thereof. (June 14, 1943.)

3672. Rice—"Mills," Association or Cooperative Organization.—James M. Trotter and Mercedes Richard Trotter, copartners trading as W. E. Trotter & Son, engaged in the sale and distribution of rice in interstate commerce and/or possessions of the United States and between the United States and a foreign country or countries, in competition with other partnerships and with corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

James M. Trotter and Mercedes Richard Trotter agreed, either individually or as copartners, whether trading as W. E. Trotter & Son or under any other name or names, that they and each of them, in connection with the sale and distribution of their merchandise in commerce as defined by Federal Trade Commission Act, will cease and desist forthwith from the use of the words "Mills," "Associated" or "Cooperative," as part of or in connection with any trade name or names used by them; and from the use of such word or words 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 they actually own and operate or directly and absolutely control a rice mill or mills or that the business conducted by them is either that of an association or that of a cooperative organization. (June 14, 1943.)

3673. Yearbooks, Etc.—Printing Establishment.—Charles Lipson, an individual trading as National Academic Publications, engaged in the sale and distribution, in interstate commerce, of yearbooks or school annuals, in competition with other individuals, corporations, or 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.

Charles Lipson, in connection with the sale and distribution of yearbooks or other publications in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from representing, directly or inferentially that he conducts or operates a printing, engraving, lithographing, or binding business or establishment; that he produces yearbooks or any other publications; or that he actually owns and operates or directly and absolutely controls an establishment in which any publications are printed or produced. (June 18, 1943.)

3674. Chicks—Source or Origin, Tests, Quality, Etc.—Frank B. Leister, an individual, trading as Clear Spring Hatchery, engaged in the

sale and distribution of chicks in interstate commerce, in competition with other individuals, corporations, or 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.

Frank B. Leister, either individually, or trading as Clear Spring Hatchery, or under any other trade name or names, in connection with the sale and distribution of chicks in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. The use of any statement, depiction, or other representation, the effect of which tends or may tend to convey the belief or impression that chicks offered for sale and sold to the consuming public are hatched from eggs produced at the Clear Spring Hatchery, when, in fact, such chicks are hatched from eggs obtained from supplying farmers or poultry raisers.
 2. Representing that he blood tests and/or culls the flocks which produce the eggs from which such chicks are hatched or that he personally supervises such blood testing or culling.
 3. Representing, directly or inferentially, that said hatchery acquires high quality poultry or new stock from recognized specialty poultry breeders each year; and from any representation the effect of which tends or may tend to convey the belief or impression that supplying farmers' flocks are provided with any high quality or specialty poultry other than or in excess of that actually provided or supplied.
 4. The use of any statement or representation the effect of which tends or may tend to convey the belief or impression that breeder stock of the Hanson U. S. R. O. P. strain or any other U. S. R. O. P. strain has been placed in the flocks of all supplying farmers; that all chicks sold by said hatchery are related to or reflect the strain of U. S. R. O. P. poultry; or that chicks sold under any specific trade designation as, for example, "Clear Spring Hanson Strain Leghorn Big Type," are sired by cockrels in all the flocks producing the eggs from which such chicks are hatched, are in fact procured from J. A. Hanson or other U. S. R. O. P. poultry breeders, as the case may be.
 5. Representing, directly or inferentially, that the flocks producing the eggs from which such chicks are hatched consist wholly of high grade stock and/or that said chicks are the best that can be procured. (June 18, 1943.)
3675. Fig Trees—Unique, Comparative Merits, Qualities, Properties or Results, Etc.—Felix Pedrini, an individual, trading as King Fig Plantation, engaged in the sale and distribution in interstate commerce

of fig trees under the trade name "King Fig," in competition with other individuals and with corporations or 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.

Felix Pedrini, in connection with the sale and distribution of said fig trees in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from representing, directly or inferentially:

(a) That said trees are not affected by cold climatic conditions or that they will produce ripe fruit regardless of such climatic conditions.

(b) That said trees can be depended upon to produce perfect fruit in northern California, Oregon, or Washington; or consistently to produce ripe fruit in such area.

(c) That said trees can be depended upon to produce ripe fruit within 5 months after planting or to bear ripe fruit twice a year.

(d) That said trees will produce ripe fruit where no other fig will ripen; that they are the only trees that produce ripe fruit in northern California, Oregon, or Washington; that no other fig trees will produce ripe fruit in said area; or that such area is a no-fig land.

(e) That said tree is miraculous, marvelous, or amazing; or that it is a freak of nature, a modern plant miracle or a horticultural phenomenon. (June 21, 1913.)

3676. Ultraviolet Lamps—Qualities, Properties or Results, Safety, Etc.—Hugo Gernsback, in addition to his business as a publisher of magazines, engaged in the sale of various electrical and mechanical devices, in interstate commerce, under the trade name "Hudson Specialties Company," said devices including so-called ultraviolet sun lamps, of the carbon variety, supplied the said individual by the manufacturer thereof at Philadelphia, Pa., and infrared bulb lamps manufactured in New York City, in competition with other individuals and with corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Hugo Gernsback, in connection with the offering for sale, sale, or distribution of said lamp devices, agreed to cease and desist forthwith from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement or advertising matter of whatever kind or description, by means of the United States mails, or by any means in commerce, as commerce is defined by the Federal Trade Commission Act, which advertising represents, directly or by inference, that the rays produced by his ultraviolet lamp will improve glandular action, give the body nutri-

tion, or keep a person healthy; that said ultraviolet lamps are such as to be properly designated "sun lamps"; that the use of the infrared lamps will be an effective means to tone up the system and assist in throwing off certain body ailments, or that their use will help nature in its curative powers by forming heat units in the blood, or be of therapeutic value except as means to supply heat, and then only in such conditions where heat is not contra-indicated.

2. Disseminating, or causing to be disseminated, any advertising by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined by the Federal Trade Commission Act, of said devices, or any thereof, which advertising contains any of the representations referred to in the previous inhibition, or which fails to reveal that there is potential danger in the improper use of said devices, and that their use in certain contra-indicated conditions may result in serious injury to health: *Provided, however,* That if appropriate warnings, with respect to the improper use of said devices and that they should not be used in certain contra-indicated conditions, are provided on the labels, in the labeling, or in both labels and labeling, the advertising need contain only the cautionary statement: "CAUTION: Use Only as Directed." (June 22, 1943.)

3677. Imitation Diamond Rings, Etc.—Prices, Quality, Composition, Success, Use or Standing, Guarantee, Competitive Products.—The Hale Drug Co., a Tennessee corporation, Krohn Sales Co., an Ohio corporation, both corporations having same stockholders and officers: M. H. Krohn, vice president, B. G. Krohn, secretary-treasurer, and both directors of each corporation; Milton E. Yales, an employee of Krohn Sales Co., buys for its retail outlets including The Hale Drug Co., prepares advertising copy used by The Hale Drug Co., and establishes prices of merchandise offered for sale. Said parties, engaged in the sale and distribution of drugs, cosmetics, and other articles of merchandise in interstate commerce, in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Hale Drug Co., Krohn Sales Co., M. H. Krohn, B. G. Krohn, Milton E. Yales, and each of them, in connection with the offering for sale, sale, or distribution of their merchandise, in commerce as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from:

(a) Representing as the customary or regular retail prices of such merchandise, prices which are in fact fictitious and in excess of prices at which said merchandise is regularly and customarily sold or offered for sale at retail.

(b) Representing that prices advertised constitute discounts to purchasers when in fact such prices are those at which they regularly and customarily sell such merchandise in the normal and usual course of business.

(c) Representing that the price charged for an imitation diamond ring or similar article "merely helps pay for local advertising, express, salespeople, etc.," or that a coupon used by the buyer is "valuable" in any sense that it represents the actual cost of the article or any other trade concession to the user.

(d) The use of the words "facsimile diamond ring," "facsimile diamonds" or other word or words of like meaning as descriptive of or in connection with any ring inset or other product which is not in fact a facsimile, that is to say, an exact reproduction of a diamond with the essential hardness, properties and characteristics thereof; or representing that such article is "not merely imitation" or that it "represents the utmost skill of modern science."

(e) Use of the terms "14-KT Gold" or "14-Kt Gold . . . finish" or other term of like meaning as descriptive of a gold alloy covering which is not actually of 14-carat fineness and which is not of such substantiality as properly to be so described.

(f) Use of the statement "Social leaders, millionaires, and our finest people wear these . . .," namely, the cheap jewelry advertised, or any other statement or implication of like meaning.

(g) Representing, directly or inferentially, that a ring sold for 59 cents, or thereabouts, is of such quality as to withstand tests by acid, fire, and water.

(h) Representing that a "Lifetime Guarantee" or any other guaranty, certificate or agreement is given with rings sold, without disclosing, in their advertisements and in all sales promotional representations, the service charge or other unusual terms thereunto pertaining; or the designation of any agreement as a guarantee, guaranty, or warranty, which involves a service charge or calls for the payment of additional money by the purchasers of such rings or other articles.

(i) The use of the word "lifetime" or of any other statement or representation of like meaning in any manner the effect of which tends or may tend to convey the belief or impression that a ring sold for 59 cents, or one of similar quality, will last for a lifetime or will be serviceable for any period of time greater than can reasonably be estimated as the approximate usable existence thereof.

(j) Disparagement of competitors or their merchandise by the use of statements such as "It's a hold-up! unless you buy at Hale's", or in any other manner which tends or may tend to reflect upon the honesty or integrity of their competitors. (June 22, 1943.)

3678. Automobile Engine Parts—Qualities, Properties, or Results.—Osco Motors Corporation, engaged in the business of converting automobile

motors into marine engines, also in the sale, in interstate commerce, of engine parts which were to be used as means to increase the horsepower of motors of the Ford V8 type in accordance with instructions sold and disseminated in commerce, as commerce is defined by the Federal Trade Commission Act, and its vice president and secretary, George L. Callery, trading as Power Associates, said corporation and said individual, being in competition with other corporations, individuals, and concerns engaged in similar commercial activities, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Osco Motors Corporation and George L. Callery, in connection with the offering for sale and sale of the aforesaid engine parts or other products in commerce as defined by the Federal Trade Commission Act, agreed that it, the said corporation, and he, the said individual, will cease and desist from the use in its, or his, contact advertising, or in any other way, of the word "simple" as descriptive of the "instructions" offered for use as means to accomplish an increase or transformation in the horsepower of a motor; and from the use of the word "simple," or of any other word or words of similar meaning or implication, in referring to such "instructions," so as to import or imply or the effect of which tends or may tend to cause or convey the belief or impression that, with the aid of said instructions, the power capacity of a motor can be increased or transformed easily or readily, if at all, by one who does not have the necessary skill, and/or that the increase or transformation in motor power can be accomplished without the use of extra equipment and its attendant cost. (June 22, 1943.)

3679. Paints, Etc.—Domestic as Imported, Prices and Quality.—Great Western Paint Manufacturing Corporation was engaged in the manufacture of paints and related products, and in the sale and distribution thereof, in interstate commerce, under a number of adopted trade names, of which "National Paint & Color Co." was one; and Rolla E. Showalter, an individual, for some time prior to October 1941 was engaged as a distributor of certain paints manufactured by the aforesaid Great Western Paint Manufacturing Corporation. Such paints including a red oxide barn paint and several ready-mixed paints which differed from one another only in color, manufactured by the aforesaid corporation in accordance with formulae worked out by the said Rolla E. Showalter in cooperation and concert with an official of the said Great Western Paint Manufacturing Corporation, were placed in containers to which were affixed labels supplied by said corporation and delivered by the corporation at its plant to the said individual, who transported such paint products across State lines into various States where he sold or effected the sale of said paint products, frequently at auction. Said individual and corporation, in competition

with other corporations and individuals and concerns engaged in the sale and distribution of similar merchandise, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Great Western Paint Manufacturing Corporation and Rolla E. Showalter, in connection with the sale and distribution of paint products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Use of the words "Imported Spanish" as descriptive of said paint products, or any thereof; and from the use of the said words, or either thereof, so as to import or imply that said paint products, or any thereof, or any ingredient thereof, are or is of Spanish origin or have or has been imported from Spain or abroad.

2. Use on or in connection with their paint products of any false, fictitious, or misleading representation which purports to be the retail sales price thereof, but which, in fact, is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade.

3. Using any quantitative analysis, or other means, to purportedly describe said paint products but which does not truthfully and properly designate all ingredients of every kind contained therein, together with the correct percentage or proportion of each of said ingredients.

4. Use of labels bearing the statement "U. S. Standard Measure 1 Gal." on containers, the actual net content of which is less than 1 gallon; or otherwise representing, directly or inferentially, that the quantity of paint in the container is in excess of the actual content thereof. (June 28, 1943.)

3680. **Cameras—Qualities, Properties or Results.**—Eugene Jaffe, an individual, trading as Craftsman Sales Co., and as Sterling Sales Co., engaged in the sale of merchandise, including a camera designated "Cinex-V," 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.

Eugene Jaffe, trading as Craftsman Sales Co., or under any other name, in connection with the advertisement, offering for sale or sale of the Cinex-V camera in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "Color Camera," or of any other word or words of similar meaning or implication, as descriptive of or in referring to said device, so as to import or imply, or the effect of which tends or may tend to cause or convey the belief or impression to customers or potential purchasers that the said device is of such construction

as enables it to reproduce prints in color, or to take pictures in color, without the use of special films treated so as to reproduce color photography, or that the said device will take pictures in color photography, while other cameras, using film of like kind, will not, or that a camera is necessary or required to take color photography. The said individual also agrees to cease and desist from stating or representing in any way or manner that the lens, with which the Cinex-V camera is equipped, is high-speed, or that the shutter thereof is fast as such terms are understood by the photography trade. (June 28, 1943.)

3692. Medicinal Preparations—Qualities, Properties or Results and Safety.—Boleslaw Rosalak and Zenobia Rosalak, individuals, trading as Belvedere Products, engaged in the sale and distribution in commerce between and among the various States of the United States of medicinal preparations designated "Polanka" and "Zielanka," 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.

Boleslaw Rosalak and Zenobia Rosalak 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 preparations designated "Polanka" or "Zielanka" or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such names or any other name or names, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that the preparation heretofore designated "Polanka" will aid the digestive system, regulate the stomach or provide relief for digestive disturbances generally; that said preparation constitutes an adequate treatment or effective remedy for stomach disorders; or for digestive disturbances generally; or that it has any therapeutic value other than that of temporarily relieving constipation and facilitating the expulsion of gas from the bowels.

(b) Representing, directly or inferentially, that the preparation heretofore designated "Zielanka" will relieve rheumatic, arthritic, or muscular pains; that said preparation is an adequate treatment or effective remedy for rheumatism, arthritis, or muscular aches or pains; or that it has any therapeutic value other than that of temporarily relieving constipation and facilitating the expulsion of gas from the bowels.

(c) Disseminating or causing to be disseminated any advertisement pertaining to said preparations which represents, directly or inferentially, that the use thereof is safe, or which fails to reveal the poten-

tial danger in their use in the presence of abdominal pains, cramps, colic, nausea, vomiting, or severe or continuing stomach pains or other signs of appendicitis: *Provided, however,* That if the directions for the use of such preparations, whether they appear on the label, in the labeling, or in both label and labeling, contain an adequate warning of their potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: **CAUTION, Use only as directed.** (May 14, 1943.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

03088. Medicinal Preparations—Qualities, Properties or Results and Nature.—Paul Sturzenegger, an individual, doing business as Breosan Laboratories, Post Office Box 142, Long Island City, N. Y., vendor-advertiser, was engaged in selling four medicinal preparations designated "Breosan Suppositories," "Breosan Solution," "Breosan Ointment," and "Breosan Lanolin" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That either Breosan Suppositories or the "Breosan Treatment," consisting of Breosan Suppositories, Breosan Solution, and Breosan Lanolin used in combination, have any therapeutic value in connection with the treatment of hemorrhoids other than that of emollient palliatives.

(b) That Breosan Solution is a prophylactic or an antiseptic; that it will soothe painful wounds; will not irritate or burn; has a healing property and will cause wounds to heal without scars; will promote the growth of new tissue; will induce phagocytosis; is not a drug; or has any beneficial therapeutic effect in the treatment of wounds, abrasions, abscesses, athlete's foot, blood poisoning, boils, bruises, burns of any degree, carbuncles, catarrh, chafes, chapped skin, colds, cold sores, cuts, eczema, fistulas, frostbite, hay fever, hemorrhoids, herpes, hives, itchy skin and scalp, insect bites, lacerations, piles, pimples, poison ivy and poison oak irritations, pyorrhea, runarounds, scalds, sore throat, scratches, sunburn, tonsillitis, ulcers, varicose ulcers, bladder catarrh, gonorrhea, metritic erosions, vaginitis, or is of benefit in female hygiene.

(c) That Breosan Ointment has any beneficial therapeutic effect in the treatment of wounds of many kinds, burns, chapped hands, colds, eczema, herpes, hay fever, boils, or hemorrhoids.

(d) That Breosan Lanolin has any beneficial therapeutic effect in the treatment of wounds of many kinds, burns, chapped hands, colds, eczema, herpes, hay fever, boils, or hemorrhoids.

The said Paul Sturzenegger further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Jan. 15, 1943.)

03089. Radio Device—Qualities, Properties or Results.—L. J. Thomas, an individual, trading as The Vogue Co., and as Vogue Eliminator Co., 7759 South Halsted Street, Chicago, Ill., vendor-advertiser, was

¹ The stipulations in question are those of the radio and periodical division with vendor-advertisers and advertising agents. Period covered is that of this volume, namely, January 1, 1943, to June 30, 1943, inclusive. For digests of previous stipulations, see vols. 14 to 35 of Commission's decisions.

engaged in selling a radio device designated "3 in 1 Radio Tuner" for attachment to radio-receiving sets for the purpose of improving reception and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That by the attachment of 3 in 1 Radio Tuner to a radio-receiving set, interference in the reception of radio waves, caused by electrical appliances, will be eliminated.

The said L. J. Thomas further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Jan. 15, 1943.)

03090. Formulas—Qualities, Properties or Results, Composition, Government Specifications Conformance, Nature, Limited Offers and Safety.—Winslow W. Chase, an individual doing business under the trade name The Thaxly Co., 450 Randolph Street NW., Washington, D. C., vendor-advertiser, was engaged in selling formulas and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That with respect to the preparations compounded from the said formulas:

1. Formula #226, Night Cream, is a tissue cream.
2. Formulas #462A and B, Toilet Lotions, contain healing ingredients.
3. Formula #462D, Astringent Lotion, reduces large pores.
4. Formula #462E, New Type Lotion, contains no glycerine.
5. Formula #216, Cream Lotion, possesses healing properties.
6. Formula #83, Face Cleanser—Liquid, penetrates into the depths of the pores, or cleanses the pores.
7. Formula #109, Freckle Tan Cream, bleaches the skin.
8. Formula #121, Foot Powder, heals or toughens the skin.
9. Formula #225, Pressing Oil, stimulates the growth of hair or eradicates dandruff.
10. Formula #91, Soapless Shampoo, contains oils that feed into the hair follicles.
11. Formula #148, Rug and Carpet Cleaner, acts as a disinfectant or moth preventive.
12. Formula #302, Sweeping Compound, acts as a disinfectant.
13. Formula #645, Liquepine Cleaner, contains no alkali.
14. Formula #161, Hand Cleaner—Powder, possesses healing properties.
15. Formula #136, Hand Protector, keeps the skin healthy.
16. Formula #163, Waterless Soap Paste, contains healing properties.
17. Formula #220, Coconut Oil Soap, contains healing properties.
18. Formula #220, Dog Soap, keeps a dog's coat healthy, or contains antiseptic or germicidal properties.
19. Formula #519, White Rose Lotion, stimulates or heals the skin.
20. Formula #105, Beauty Cake, is a tissue cream.
21. Formula #464, Eye Lotion, constitutes a treatment for weak eyes.
22. Formula #655, Soy Bean Milk, contains the same food properties as cow's milk, or is a treatment for stomach ailments.

23. Formula #59, Building Cleaner, restores the original color, or beauty to the surface of structures.
24. Formula #265, Dry Powder Paint, provides protection against vermin.
25. Formula #56, Rug Hold, renders rugs mothproof.
26. The Formula for Chemarble provides a product that is a non-conductor of heat, cold or sound.
27. Formula #524, Glove Cleaner, prevents yellowing of white gloves.
28. Formulas #443A and B, Waterproofing Compounds, have waterproofing properties.
29. Formula #175, Rat Exterminator, may be relied upon to kill rats.
30. Formulas #495E and F, Insect Exterminators, are effective insect exterminators.
31. Formula #207, Egg Maker, stimulates or increases egg production.
32. Formula #311, Roup Powders, is effective as a treatment for roup in fowl.
33. Formula #184A, Deodorant-Disinfectant, can be relied upon to safeguard against illness in homes, schools or factories.
34. Formula #476, makes a chocolate drink; or that Formula 1339, "Chocolo," makes a chocolate dessert.
35. Formula #528 makes orangeade.
- (b) That all Food Flavor Formulas include correct labeling instructions based on rulings of the United States Department of Agriculture;
- (c) By using the real, true, or genuine names of food or beverage flavors to describe or designate formulas for preparations that produce imitation flavors, that said flavors are real, true, or genuine flavors: *Provided, however,* That where it is desired to describe or designate an imitation food or beverage flavor the name of the flavor shall be preceded by the word "IMITATION";
- (d) That any try-out offer is for a limited period of time, when such offer is made to all prospective purchasers at any and all times without any limitations as to time whatsoever.

It is hereby further agreed by the said Winslow W. Chase that in the dissemination of advertising by the means and in the manner above set out of Formula #234, Skin Peel, or of any other formula for a medicinal preparation of substantially the same composition or possessing substantially the same properties, he will forthwith cease and desist from representing directly or by implication that said preparation is harmless, and from disseminating any advertisements or from distributing any formula which fails to reveal that said preparation should not be administered except under the direct and continual supervision of a physician.

The said Winslow W. Chase agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 12, 1943.)

03091. Medicinal Preparations, Food Supplements, Body Device, and Booklets—Qualities, Properties or Results, Nature, Etc.—Florence English Henry, an individual trading under her own name and as Dr. V. P. English, Route 3, Box 5-HC-199, San Diego, Calif., vendor-advertiser, was engaged in selling medicinal preparations designated Cerate,

Tissue Food Tablets A and Tissue Food Tablets B; a device designated Head-Hold Spine-Stretch Harness and a booklet entitled "Book No. 4" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said medicinal preparations and the said "Head-Hold Spine-Stretch Harness," used alone or in combination, as directed or otherwise, constitute a remedy or cure, or an aid in the treatment of:

1. Displaced vertebrae or spinal irritations.
2. Nerve pressure, aches or pains in the spine, curvature of the spine, or burning or tender spots along the spine.
3. Pains in or between the shoulders or shoulder blades or pinching shoulders.
4. Headache, pains at the base of the brain, or in the top or back of the head.
5. Soreness in neck, grit in neck, or the sensation of pulling or drawing of cords in the neck.
6. Dizziness, vomiting, chills, hysteria, lost memory, insanity, or any impairment of mind.
7. Pains in chest, inability to expand, gas on stomach or bowels, coliclike pains in abdomen, constipation, indigestion, liver troubles, or fainting spells.
8. Pain or distress in heart, or pumping, fluttering or subnormal beating of the heart.
9. Soreness, itching, burning, numbness or swelling in the hands, limbs, or feet, pricking pains in feet, bungling at ends of fingers, pains in heels, coldness or heaviness in feet, tingling, pricking as if feet were asleep; or puffs formed at ankles or behind knees.
10. Displaced womb, uterine troubles, or other female disorders.
11. Tumors or diseases of the kidneys.
12. Pull of muscles, pin-prick or crazybone feeling, sighing or yawning, a feeling as belt around the body, the lower part of body separated from the upper part, or insects creeping over the body.
13. Organs of the body sinking down into the abdomen, enlargement of the lower part of the body, or conditions which cause the body to distend, protrude or become pendulous, or lump in the side or other parts of the trunk.
14. Rheumatism, paralysis, sciatica, or neuralgia.
15. Diseases of the eyes, conditions which require the need of glasses, specks or spots before the eyes, aches or pains back of eyes.

(b) That said products or method of treatment, or any combination thereof, are twofold or make cartilage joints strong, bulky, resisting, springy, or enable them to hold vertebrae in the proper place.

(c) That the preparation designated Cerate, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, is a superior salve, or a remedy or cure, for or a preventive of, burns, sunburn, cuts, sores, dry broken skin, chapped hands or face, or as a protection against said disorders, or that it has any therapeutic properties in excess of a mild counter-irritant.

(d) That the device designated Head-Hold Spine-Stretch Harness stretches intervertebral joints between the skull and sacrum, pulls vertebrae in the spine away from each other, stops squeeze of spinal nerves between the bones, or relieves pain, ache, peculiar feeling, distress or disorder caused by pressure on the nerves.

(e) That the instructions in Book 4 show how to relieve spinal irritation, or that by its methods relief can be given by another person.

The said Florence English Henry further agreed to cease and desist from the use of the words "Tissue Food" in the brand name of the preparations designated Tissue Food Tablets A and Tissue Food Tablets B, or from otherwise representing that such preparations constitute a food for tissues.

The said Florence English Henry further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 16, 1943.)

03092. **Weight Reduction Plan Which Included Medicinal Preparations, Diets, and Exercises—Qualities, Properties or Results and Safety.**—Vitalix, Inc., a corporation, 107½ East Fifth Street, Canton, S. Dak., vendor-advertiser, was engaged in selling a plan of weight reduction consisting of two medicinal preparations designated "Mild Laxative Tablets" and "Active Laxative Tablets," two diets, one called "Reducing Week Diet" and the other "Normal Week Diet," and a list of exercises and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

Through use of the word "normal" in referring to the diet designated "Normal Week Diet," or in any other manner, that said diet allows for normal food consumption.

The said Vitalix, Inc., further agreed not to publish, or cause to be published, any advertisement for the aforesaid diet, called "Reducing Week Diet," which fails to reveal that said diet may be harmful unless the dieter when following such regime is under the personal supervision of a physician.

That said Vitalix, Inc., further agreed not to publish, or cause to be published, any advertisement for the aforesaid preparations, designated "Mild Laxative Tablets" and "Active Laxative Tablets," which fails to reveal that said preparations should not be used when abdominal pain, nausea, vomiting, or other symptoms of appendicitis are present, and also that the frequent or continued use thereof may result in dependence on laxatives: *Provided, however,* That such advertisements need only contain the statement, "CAUTION, Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

The said Vitalix, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 10, 1943.)

03093. **Astrological Forecasts, Lucky Charms, Incense, Etc.—Qualities, Properties or Results.**—Thomas Clark, Willie Davis, and Willie Mae Davis, copartners, doing business under the trade name Grove Products, 409 First Street NW., Washington, D. C., vendor-advertisers, were engaged in selling Astrological Forecasts, a publication entitled

"Success," love and luck inducing devices, articles of mysticism including Jinx-breaking powder, Chinese Wash, Compelling Oil, Commanding Incense, Magic Powder and Perfume, Uncrossing Incense, and similar products and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That their Astrological Readings will show one how to be successful, attain security or become prosperous, how to protect health or get well, to cast out evil or "cross" condition, will enable one to overcome unhappiness, to secure employment, to choose his lucky number or to win at gambling.

(b) That information in the book entitled "Success" will enable one to achieve his desires in love or in all transactions, or to gain health and wealth.

(c) That "Success Powder" and "Lover's Incense" will bring back lost loved ones, will heal sickness or will bring back luck or success.

(d) That "Jinx-breaking Powder" and "Chinese Wash" will drive away evil or "cross conditions," or will break the jinx.

(e) That any of their products will make one successful financially, at work, in business, or with home affairs, will "uncross" "crossed" conditions, drive away evil, prolong life, heal the sick, solve all problems, bring luck or successful results in love or in gambling, or will cause a person to have pleasant dreams or to make them come true.

The said Thomas Clark, Willie Davis, and Willie Mae Davis agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 10, 1943.)

03094. Medicinal Preparations—Qualities, Properties or Results.—Makers of Kal, Inc., a corporation, 256 North New Hampshire Avenue, Los Angeles, Calif., vendor-advertiser, was engaged in selling certain preparations designated "Lak" and "Lak Plus" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that either of such preparations:

(a) Improves bowel health, exercises intestinal muscles, brings about regularity or constitutes a remedy or cure for constipation.

(b) Speeds up digestion or constitutes a treatment for sluggish digestion.

(c) Quiets jumpy nerves or constitutes a treatment for tired or jittery nerves or for any condition of nervousness.

(d) Eliminates poisonous wastes from the body.

(e) Builds resistance to fatigue, or restores pep or energy.

(f) Raises conditions of under-par health to abundant health or improves the general state of the health.

The said Makers of Kal, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 12, 1943.)

03095. Coal Tar Hair Dye Product—Composition and Safety.—Humbert Cagnazzi, Gaetano Visceglie, and Nelson Torelli, individuals and copartners, trading as Nem Co., 475 Fifth Avenue, New York, N. Y., vendor-advertisers, were engaged in selling a certain coal tar hair dye

product designated "Regina" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that such product contains an ingredient which will provide the user thereof with special or unique benefits.

It is also hereby agreed by Humbert Cagnazzi, Gaetano Visceglie, and Nelson Torelli that in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparation now designated Regina Hair Dye, also known as Regina Hair Coloring, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, they, and each of them, will forthwith cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

CAUTION: Use only as directed on label.

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application.

The said Humbert Cagnazzi, Gaetano Visceglie, and Nelson Torelli, and each of them, further agreed not to publish any testimonial containing any representation contrary to the foregoing agreement. (Mar. 17, 1943.)

03096. Medicinal Preparation—Qualities, Properties or Results and Safety.—Buenger Pharmacal Co., a corporation, 1441 Welton Street, Denver, Colo., vendor-advertiser, was engaged in selling a drug designated Me-Ba and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said product is a stomachic or that it will relieve or cure gas pains, indigestion, belching, heartburn, or ulcers or that the product goes to the cause of disorders of the stomach.

It is further agreed by the said Buenger Pharmacal Co. that it will forthwith cease and desist from disseminating any advertisement which fails to reveal that said product should not be used when abdominal pains, nausea, vomiting 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 label-

ing, or in both label and labeling, contain a caution or warning to the same effect.

The said Buenger Pharmacal Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 30, 1943.)

03097. Coal Tar Hair Dye Product—Qualities, Properties or Results and Safety.—W. T. Boomer, an individual trading as Boomer's Mail Order Service, 815 County Street, Portsmouth, Va., vendor-advertiser, was engaged in selling a coal tar hair dye product designated "Blackstone Hair Coloring," also known as "Blackstone Hair Color," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That his product restores hair to its natural color.
- (b) That his product is safe and harmless.

It is also hereby agreed by the said W. T. Boomer that in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparation now designated Blackstone Hair Coloring, also known as Blackstone Hair Color, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, he will forthwith cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test, according to accompanying directions, should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

CAUTION: Use only as directed on label.

if and when such label bears the first described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application.

The said W. T. Boomer further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 30, 1943.)

03098. Hair Oil—Qualities, Properties or Results.—Consolidated Royal Chemical Corporation, a corporation, 544 South Wells Street, Chicago, Ill., vendor-advertiser, engaged in selling a cosmetic preparation designated "Krank's Hair Oil," and Benson & Dall, Inc., a corporation, 327 South LaSalle Street, Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf

of Consolidated Royal Chemical Corporation, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Krank's Hair Oil will stop dandruff; is a cure or remedy for dandruff or has therapeutic value in the treatment of dandruff in excess of the removal of dandruff scales.

(b) That Krank's Hair Oil will stop falling hair or early baldness or that it will promote the development of a good head of hair.

(c) That Krank's Hair Oil will have any therapeutic value in the treatment of irritations of the scalp in excess of affording relief from minor irritation due to the presence of dandruff scales.

The said Consolidated Royal Chemical Corporation and Benson & Dall, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 5, 1943.)

03099. Medicinal Preparations—Qualities, Properties or Results.—Chicago Mail Order Co., a corporation, 511 South Paulina Street, Chicago, Ill., vendor-advertiser, was engaged in selling drugs designated Security Suppositories and Stillman's Suppositories and agreed in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By the use of the designation "Security," or by any other means, that the preparation now designated Security Suppositories gives security or complete protection against conception.

(b) That its preparations are nonirritating to normal vaginal tissues.

The said Chicago Mail Order Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 5, 1943.)

03100. Cosmetics—Qualities, Properties or Results and Composition.—Milkmaid, Inc., a corporation, 647 Fifth Avenue, New York, N. Y., and Lorr Laboratories, a corporation, 200 Godwin Avenue, Paterson, N. J., vendor-advertisers, engaged in selling various cosmetics under the brand name of "Milkmaid"; and The H. M. Kiesewetter Advertising Agency, Inc., a corporation, 9 East Fortieth Street, New York, N. Y., advertising agent engaged in the business of conducting an advertising agency which disseminated advertisements for the above named products on behalf of Milkmaid, Inc., and Lorr Laboratories agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Milkmaid cosmetics will nourish the skin.

(b) That the cosmetic designated "Milkmaid Emulsion" contains milk or cream.

The said Milkmaid, Inc., Lorr Laboratories, and The H. M. Kiesewetter Advertising Agency, Inc., and each of them, further agreed to cease and desist from the use in the brand name of the cosmetic desig-

nated "Milkmaid Emulsion" of the word "Milkmaid" unless in direct conjunction therewith it is stated that said preparation does not contain milk.

The said Milkmaid, Inc., Lorr Laboratories, and The H. M. Kiewetter Advertising Agency, Inc., and each of them, further agreed not to publish or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Apr. 6, 1943.)

03101. Medicinal Preparation—Qualities, Properties or Results.—Rosie Martindale, Thomas C. Martindale, and James J. Martindale, Executors of the Estate of Thomas Martindale, doing business under the name of Thomas Martindale & Co., 25 North Tenth Street, Philadelphia, Pa., vendor-advertisers, were engaged in selling a medicinal preparation designated "Thomar Lecithin Capsules with Vitamin D" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said preparation will be beneficial in the treatment of nervous exhaustion, nervous headache, nervous insomnia, nervousness, or the symptoms of nervousness, such as irritability or loss of temper.

(b) That said preparation will increase "nerve energy" or is a "brain food".

(c) That said preparation if used as directed will furnish the average minimum daily requirement of phosphorus.

The said Rosie Martindale, Thomas C. Martindale, and James J. Martindale, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 6, 1943.)

03102. Medicinal Preparation—Qualities, Properties or Results and Safety.—Dr. W. B. Caldwell, Inc., a corporation, Monticello, Ill., vendor-advertiser, engaged in selling a drug product called "Dr. Caldwell's Laxative Senna combined with Syrup Pepsin"; and Sherman & Marquette, Inc., a corporation, 919 North Michigan Avenue, Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Dr. W. B. Caldwell, Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any therapeutic properties which this product may possess are enhanced by its pepsin content.

It is further agreed by the said Dr. W. B. Caldwell, Inc., and Sherman & Marquette, Inc., and each of them, that they will forthwith cease and desist from disseminating any advertisement which fails to reveal that said product should not be used when abdominal pain, nausea, vomiting, 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 labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Dr. W. B. Caldwell, Inc., and Sherman & Marquette, Inc., and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 12, 1943.)

03103. White Shoe Dressings—Qualities, Properties or Results.—Knomark Manufacturing Co., Inc., a corporation, 214 Taaffe Place, Brooklyn, N. Y., vendor-advertiser, was engaged in selling white shoe dressings designated "Knomark White Shoe Dressing" and "Spick White Shoe Cleaner" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said dressing will not rub off.

The said Knomark Manufacturing Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the aforesaid agreement. (Apr. 12, 1943.)

03104. Drug Preparations—Qualities, Properties or Results and Guarantee.—John T. Heinrichson, an individual doing business under the trade name Heinrichson's Natural Food Co., 3455 Lawrence Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling drug preparations designated Needee Acidophilus Culture and Needee Lactone and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Needee Acidophilus Culture or Needee Lactone is a cure or remedy.

(b) That Needee Acidophilus Culture or Needee Lactone is effective in the treatment of diarrhea, intestinal flatulence, rheumatism, arthritis, metabolic disorders, hyperacidity, colitis, or arteriosclerosis.

(c) That Needee Acidophilus Culture or Needee Lactone is a cure or complete relief for insomnia.

(d) That Needee Acidophilus Culture or Needee Lactone will drive out putrefactive bacterial or toxic poisons.

(e) That through the use of Needee Lactone or Needee Acidophilus Culture youth, beauty, glorious or lasting health can be obtained.

(f) That any Needee food product is guaranteed by or insured against imperfections by Lloyd's of London or by any other insurer or guarantor. (Apr. 20, 1943.)

03105. Poultry Remedies—Qualities, Properties or Results.—George H. Lee Co., a corporation, 1115-1117 Harney Street, Omaha, Nebr., vendor-advertiser, was engaged in selling drugs designated "Germozone" and "Acidox" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Germozone is a preventative or that it will prevent or cure diarrhea or crop or intestinal troubles.

(b) That Acidox or Germozone, whether administered alone or in conjunction with each other, is of value in preventing or helps to prevent coccidiosis, or that they will check death losses or avoid bad after-effects of such disease.

The said George H. Lee Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 22, 1943.)

03106. Circular Forms and Publications Containing Formulas—Qualities, Properties or Results.—Ernest L. Fantus, an individual doing business as Elfco Service, 440 North Wells Street, Chicago, Ill., vendor-advertiser, was engaged in selling various publications including one entitled "Brains Boiled Down" and another entitled "Formula Book," and also circular Forms Nos. 19 and 21 describing and advertising said publications and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the words "eczema remedy," or any other word or words of similar import or meaning, as the designation of or in referring to the formula so designated, or in any other manner, that a preparation compounded in accordance with said formula is a remedy or an effective treatment for eczema.

(b) Through the use of the word "croup" or the word "pneumonia" in the designation of the formula entitled "Croup & Pneumonia Salve—Vapor Jelly for Inhaling" or in referring to said formula, or in any other manner, that a preparation compounded in accordance with said formula is an effective treatment for croup or pneumonia.

(c) Through the use of the word "pimples" or the word "blackheads" in the designation of the formula entitled "Skin Lotion for Pimples, Blackheads, Etc.," or in referring to said formula, or in any other manner, that a preparation compounded in accordance with said formula is an effective treatment for pimples or is effective in the removal of blackheads.

(d) Through the use of the words "Hair Falling Out, To Prevent," or in any other manner, that a preparation made in accordance with the formula so referred to will in any way prevent or correct falling hair.

The said Ernest L. Fantus further agreed not to publish, or cause to be published, any testimonials containing any representation contrary to the foregoing agreement. (Apr. 27, 1943.)

03107. Medicinal Preparation—Safety.—Berdye H. Sigel, an individual, trading as Si-Oze Co., 116 South Michigan Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated "Si-Oze" and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that excess use of this preparation may be dangerous and that it should not be used in infants and younger children except on competent advice nor used by individuals suffering from high blood pressure, heart disease, diabetes, or thyroid trouble except upon competent advice and further that frequent or continued use may cause nervousness, restlessness or sleeplessness:

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 Berdye H. Sigel further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Apr. 28, 1943.)

03108. **Stock Remedy—Qualities, Properties or Results and Guarantee.**—Troy Chemical Co., a corporation, 115 Montgomery Street, Binghamton, N. Y., vendor-advertiser, was engaged in selling a drug preparation designated Savoss and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Savoss is a cure for any disease or that it is a remedy or agent for any disease or ailment or has any therapeutic properties except to the extent that it may act as a counter-irritant and vesicant.

(b) By the use of the word "guarantee" and the term "guarantee contract" in connection with certain conditions in such a manner as to represent, directly or by implication that Savoss is a cure or remedy for these conditions.

The said Troy Chemical Co. further agreed that on its labels, booklets, circulars, and all other advertising matter it will forthwith cease and desist from referring to its product as being formerly known as "Save-The-Horse."

The said Troy Chemical Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 5, 1943.)

03109. **Cosmetic Preparation—Qualities, Properties or Results and Success, Use or Standing.**—Modern Cosmetics, Inc., a corporation, 176 West Adams Street, Chicago, Ill., vendor-advertiser, was engaged in selling a cosmetic preparation designated Modern Eyes Mascara and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That this product, when applied with the spiral brush which accompanies it will coat all sides of the eyelashes rather than the under side only.

(b) That this product is the fastest selling brand of mascara.

The said Modern Cosmetics, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 10, 1943.)

03110.² **Poultry Feed Preparations—Qualities, Properties or Results and Comparative Merits.**—Nutrena Mills, Inc., a corporation, 44 Ewing Street, Kansas City, Kans., vendor-advertiser, engaged in selling

² Supplemental.

certain poultry feed preparations designated "Nutrena Egg Mash," "Nutrena All Mash Egg Pellets," "Nutrena Turkey Starting Mash," "Nutrena Turkey Growing Pellets," "Nutrena Chick Mash," and "Nutrena Chick Mash Pellets," and Ferry-Hanly Co., a corporation, 3200 Fidelity Building, Kansas City, Mo., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of Nutrena Mills, Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That changing to Nutrena Egg Mash or Nutrena All Mash Egg Pellets will result in any definitely stated amount of increased egg production or that these feeds will give increased egg production without limiting such basis of comparison to poor, improperly mixed, deficient or "minus" feeds.

(b) That changing to Nutrena Turkey Starting Mash or Nutrena Turkey Growing Pellets will assure more weight or faster growth without limiting such basis of comparison to poor, improperly mixed, deficient or "minus" feeds.

(c) That changing to Nutrena Chick Mash or Nutrena Chick Mash Pellets will result in more weight in chicks without limiting such basis of comparison to poor, improperly mixed, deficient or "minus" feeds; or that an increase in weight will result from the use of Nutrena Chick Mash or Nutrena Chick Mash Pellets to the extent of 44 pounds more meat per hundred birds in 8 weeks' time, or that any definitely stated increase in weight will result from the use of said feeds within any definite period of time.

The Nutrena Mills, Inc., and the Ferry-Hanly Co., and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (May 14, 1943.)

03111. Hair and Scalp Device—Qualities, Properties or Results.—Hershey Mfg. Co., a corporation, 135 South La Salle Street, Chicago, Ill., vendor-advertiser, engaged in selling an electrically driven device for use on the hair and scalp, designated "Vita-brush"; and George J. Kirkgasser and Leslie A. Drew, individuals and copartners trading as Kirkgasser-Drew, a partnership, 400 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 Hershey Mfg. Co. and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said device will check or prevent falling hair or baldness.

(b) That its use will restore life to dead hair.

(c) That the device will serve to prevent or ward off dandruff.

(d) That it is the secret of healthy hair or the answer to hair worries.

(e) That it will be of value in the treatment of headaches which have a circulatory origin

(f) That it possesses any value in the treatment or prevention of head colds and congestions.

(g) That it will relieve nervous insomnia or insure a good night's sleep.

(h) That it will cause the hair to grow thicker.

The said Hershey Mfg. Co., George J. Kirkgasser and Leslie A. Drew, and each of them further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (May 21, 1943.)

03112. Book—Qualities, Properties or Results.—Benjamin H. Levine, an individual doing business as Harvest House, 50 West Seventeenth Street, New York, N. Y., vendor-advertiser, was engaged in selling a book designated "Complete Guide for the Deafened" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said book contains directions of such nature that merely by following them the sense of hearing will be improved, saved, or restored.

(b) That said book contains directions of such a nature that they can be followed without assistance or direction by a person in the treatment of defective voice or speech.

The said Benjamin H. Levine further agreed not to publish, or cause to be published, any advertisement for the aforesaid book which fails to reveal the fact that said book refers the reader to other sources of information and guidance as well as to mechanical aids for many of the improvements and for advice as to procedures to be followed in the treatment of deafness.

The said Benjamin H. Levine agreed not to publish or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (May 25, 1943.)

03113. Medicinal Preparation—Safety.—Medora Whinrey, an individual doing business under the trade name Gly-Cas Medicine Co., 537 Johnson Block, Muncie, Ind., vendor-advertiser, was engaged in selling a laxative preparation designated "Gly-Cas" and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisements which fail to reveal that said product should not be used when abdominal pains, nausea, vomiting, 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 Medora Whinrey agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 27, 1943.)

03114. Device for Face and Neck—Nature, History and Qualities, Properties or Results.—L. G. Carter and R. B. Kalbach, copartners, trading as FaSet Co., Box 244, Rockville Center, Long Island, N. Y., vendor-

advertisers, engaged in selling a device designated FaSet; and Henry Haas and Adrian Bauer, copartners, trading as Adrian Bauer Advertising Agency, 1717 Sansom Street, Philadelphia, Pa., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of FaSet Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That FaSet is a "face lift" or a "new tissue form."

(b) That use of FaSet imparts firmness or beauty to the face or neck; lifts, rebuilds, or strengthens the muscle tissues; or removes double chin or face lines.

The said L. G. Carter, R. B. Kalbach, Henry Haas, and Adrian Bauer, 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. (June 9, 1943.)

03115. Medicinal Preparation—Qualities, Properties or Results.—Central Pharmacy, Inc., a corporation, doing business under the trade name Blis-To-Sol Co., a corporation, Fitzgerald, Ga., vendor-advertiser, was engaged in selling a certain medicinal preparation designated "Blis-To-Sol" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Blis-To-Sol is a cure or remedy for eczema, poison oak, or poison ivy, or that it has any therapeutic value in the treatment thereof in excess of affording relief from symptoms of itching.

The said Central Pharmacy, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 9, 1943.)

03116. Gas Saver Formula—Qualities, Properties or Results.—R. Plumb, an individual, Herkimer, N. Y., vendor-advertiser, was engaged in selling a formula for increasing motor fuel designated "Gas Saver Formula" and agreed, in connection with dissemination of future advertising, to cease and desist from representing directly or by implication:

That his Gas Saver Formula will enable one to make 6 gallons of motor fuel from 2 gallons of gasoline.

The said R. Plumb agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 16, 1943.)

03117. Cameras and Camera Carrying Cases—Nature, Price, Limited Offer, Free, Guaranteed, Etc.—Philip Harry Koolish and Sara Allen Koolish, individually, and trading as Monarch Camera Co., 2222 Diversey, Chicago, Ill., vendor-advertisers, were engaged in selling

cameras designated "Monarch Color Camera" and "Regal Color Camera" and carrying cases and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By using the word "color" in the brand names of said cameras, or otherwise, that said cameras are color cameras.

(b) That the price at which said cameras are offered to the purchasing public is an introductory price or constitutes a limited offer when said indicated price is the regular and usual price of said cameras and the offer is unlimited as to time.

(c) That a camera carrying case is given "free" with each camera when the cost of the carrying case is included in the purchase price of the camera.

(d) That their cameras have high-speed ground lenses or fast shutters.

(e) That their cameras are guaranteed for a lifetime.

(f) That their cameras take action pictures.

(g) That one without picture-taking experience can get perfect pictures every time with said cameras.

(h) That such cameras bring every part of the picture into sharp focus.

The said Philip Harry Koolish and Sara Allen Koolish agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 28, 1943.)

03118. Bath Cabinet—Safety, Economy and Qualities, Properties or Results.—Cabinet Manufacturing Co., a corporation, 637 Jersey Street, Quincy, Ill., vendor-advertiser, engaged in selling a device designated "Superior Bath Cabinet"; and Mace Advertising Agency, Inc., a corporation, Peoria, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Cabinet Manufacturing Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said device:

(a) Is a safe, economical, or effective way to reduce weight.

(b) Tones the skin, clears the skin or complexion, or restores a rosy flush to sallow skin.

(c) Purges the pores, stimulates the sebaceous glands, prevents clogging, impairment or destruction of the sweat glands, or removes excretion of the urea, fatty acids, carbon dioxide, or other impurities from the sweat glands.

(d) Brings new blood supply to the tissues, or feeds them, increases circulation, dilates the blood vessels, removes toxic substances from the blood stream, carries away poisons, or rids the blood of impurities.

(e) Relieves lumbago, neuralgia, rheumatism, or muscle soreness.

(f) Breaks up or helps to break up or forestall a cold, la grippe, or influenza.

(g) Aids impaired kidney function.

(h) Relieves headache or throbbing head pain, or lessens congestion of blood in the head.

(i) Brings relaxation or aids in the prevention of insomnia, or nervousness.

(j) Helps to build or maintain resistance against disease.

It is also hereby agreed by Cabinet Manufacturing Co. and Mace Advertising Agency, Inc., that in the dissemination of advertising, by the means and in the manner above set out, of a device designated "Superior Bath Cabinet," they, and each of them, will forthwith cease and desist from disseminating any advertisements which fail to reveal that there is danger of accidental burn in the use of this device as directed; that care should be exercised to prevent injury and someone should be in attendance while the device is being used to provide a steam heat bath, a dry heat sweat bath, or as a source of infrared heat; and that exposure to the heat rays from said device may result in a skin burn: *Provided, however,* That such advertisements need only contain the statement "CAUTION, Use Only as Directed" if and when the directions which accompany said device contain a caution or warning to the same effect.

The said Cabinet Manufacturing Co. and Mace Advertising Agency, Inc., and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 24, 1943.)

03119. Diet Method Including Laxative Preparation—Safety.—Benjamin Zwanger, an individual, doing business under the trade name Laxo, 793 Wyckoff Avenue, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a certain diet method designated "Laxo Method," which includes the sale of a laxative preparation designated "Laxo" and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisements which fail to reveal that said product should not be used when abdominal pain, nausea, vomiting, or other symptoms of appendicitis are present, and that frequent or continued use of the preparation "Laxo" may result in dependence on laxatives: *Provided, however,* That such advertisements need only contain the statement: "CAUTION: Use Only as Directed," if and when the directions for use wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning statement to the same effect.

The said Benjamin Zwanger further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 28, 1943.)

03120. Medicinal Preparation—Qualities, Properties or Results, Laboratories and Safety.—R. Q. Howe, an individual, doing business under the trade name of R. Q. Laboratories, 1117 South Ninth Street, Alhambra, Calif., vendor-advertiser, was engaged in selling a medicinal preparation recommended for the treatment of Athlete's Foot, Ring Worm, Eczema, Impetigo, Poison Ivy, and other skin irritations, designated "R-Q" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or

by implication, that "R-Q," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name:

(a) Is a remedy or cure for ringworm unless it is explained that the preparation will not destroy deep-seated ringworm infections.

(b) Is a remedy or cure for eczema, poison oak, or poison ivy, or that it is a treatment for such condition in excess of affording relief from itching.

(c) Is a treatment for skin infections without specifying the conditions for which it has therapeutic value.

(d) By the use of the word "laboratories" in his trade name or otherwise, that he maintains or operates a laboratory.

The said R. Q. Howe further agreed to cease and desist from disseminating any advertisements which fail to reveal that the said preparation may produce skin irritation, and that its use should be discontinued as soon as irritation appears: *Provided, however,* That such advertisements need contain only the statement: "CAUTION: Use Only as Directed," if and when the directions, wherever they appear on the label, in the labeling, or in both the label and labeling, contain a caution or warning to the same effect.

The said R. Q. Howe further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (June 30, 1943.)

03121. Cigarettes—Tests and Quality.—Brown & Williamson Tobacco Corporation, a corporation, 1600 West Hill Street, Louisville, Ky., vendor-advertiser, engaged in selling cigarettes under the brand name "Avalon"; and Russel M. Seeds Co., Inc., a corporation, Palmolive Building, Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Brown & Williamson Tobacco Corporation, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the report of laboratory tests appearing in Reader's Digest issues of July 1942 proves that Avalon Cigarettes are the finest quality.

The said Brown & Williamson Tobacco Corporation and Russel M. Seeds Co., 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. (June 30, 1943.)

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION¹.

POND'S EXTRACT COMPANY v. FEDERAL TRADE COMMISSION

No. 17977—F. T. C. Docket 3427

(Circuit Court of Appeals, Second Circuit. February 8, 1943)

Ordered, pursuant to stipulation as below set forth, that petition to review order of Commission in Docket 3427, 33 F. T. C. 1253, requiring respondent, petitioner herein, and its officers, etc., in connection with the offer, etc., in commerce, of its cosmetic creams and lotions, to cease and desist from representing that its said products have any added beneficial value by reason of their vitamin A content, or that its cold cream (a) causes lines, wrinkles, or blemishes to disappear from the skin, or that it prevents the formation of lines, wrinkles, or blemishes in the skin, or (b) has any appreciable effect upon the underskin, that it liberates the underskin, or leaves the underskin free to function, or (c) that dirt, make-up, or other impurities below the surface of the skin may be softened, loosened, or lifted from the underskin through the use of respondent's cold cream; be withdrawn and proceedings dismissed.

Blake & Voorhees of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. William L. Pencke* and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, all of Washington, D. C., for Commission.

STIPULATION FOR DISCONTINUANCE OF APPEAL

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 with this court under date of November 8, 1941, be withdrawn and the proceedings herein discontinued, without costs to either party;

¹ Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 1253.

and that the clerk of this court be and he hereby is authorized to enter an order to this effect.

[S] BLAKE & VOORHEES,
Blake & Voorhees,
Attorneys for the Petitioner.

[S] W. T. KELLEY,
W. T. Kelley,

Chief Counsel, Federal Trade Commission.

FEBRUARY 5, 1943.

So ordered.

D. E. ROBERTS,

D. E. Roberts, *Clerk.*

FEBRUARY 8, 1943.

INTERNATIONAL PARTS CORPORATION v. FEDERAL
TRADE COMMISSION¹

No. 7998—F. T. C. Docket 4513

(Circuit Court of Appeals, Seventh Circuit. February 17, 1943)

CEASE AND DESIST ORDERS—PUBLIC INTEREST—WHERE SUBSTANTIAL BUSINESS IN
WIDELY USED ARTICLE, BY SELLER.

Evidence that seller of replacement auto parts did substantial business in widely used article, competing in interstate commerce with several firms, sustained finding of "public interest" as basis for cease and desist order against misrepresentations.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—AUTO MUFFLERS.

Evidence did not sustain cease and desist order of Federal Trade Commission against representing that spot-welded, locked or crimped seams in automobile muffler resulted in greater danger of gas poisoning than continuous electric-welded seams.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—WORDS AND PHRASES—"PREVENTS"—WHETHER CONNOTATION OF PERMANENCY.

Where seller of automobile mufflers represented merely that finish on mufflers "prevents" rust and corrosion, cease and desist order against representing that finish would prevent rust and corrosion permanently was not warranted, since "prevents" is a word of common under [884] standing without connotation of permanency.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—WORDS AND PHRASES—PRESUMPTION.

In proceeding to review cease and desist order of Federal Trade Commission, petitioner will be presumed to have used word complained of in its representations in ordinary and commonly accepted understanding, in absence of contrary showing.

¹ Reported in 133 F. (2d) 883. For case before Commission, see 34 F. T. C. 802. Rehearing denied March 22, 1943.

(The syllabus, with substituted captions is taken from 133 F. (2d) 883)

On petition to review order of Commission, order vacated.

Mr. David Silbert, of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, and *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. Karl E. Steinhauer*, attorney, all of Washington, D. C., for Commission.

Before EVANS and MINTON, *Circuit Judges*, and LINDLEY, *District Judge*:

MINTON, *Circuit Judge*:

The petitioner, International Parts Corporation, seeks to review and set aside an order of the Federal Trade Commission ordering it to cease and desist from making certain representations concerning its products. The petitioner, an Illinois corporation with its place of business in Chicago, sells replacement auto parts at wholesale in interstate commerce. Its president is Mr. Sherman, who was formerly associated with his brother-in-law, Mr. Grawoig, in the same line of business. They did business through an Illinois corporation located in Chicago, known as the Universal Parts Company. Sherman and Grawoig had a disagreement which ended in a fist fight, and Sherman left Universal and started a rival business through the petitioner corporation.

Among the replacement parts sold by the petitioner in competition with Universal and many others were automobile mufflers. The petitioner did not manufacture the mufflers, but purchased them from a concern which manufactured them. In its advertising and sales literature, the petitioner stated:

WARNING!
To Protect Yourself
Against
Leaking Carbon
Monoxide Gas
Be Sure
Your Muffler
Is Made With
Continuous
ELECTRIC-WELDED SEAMS
Throughout
* * * Not Locked, Crimped or Spot-Welded

Your
Safeguard INTERNATIONAL
Is An

The petitioner also represented that its mufflers were made with the

Finest Quality Metallic Finish
Prevents Rust and Corrosion.

The Commission issued and served a complaint upon the petitioner in which it charged the petitioner with false and misleading representations concerning its mufflers in the following particulars:

- (1) Electric welded seams throughout—not locked, crimped or spot-welded.
- (2) Double shell construction for added strength and quiet operation, exclusive feature.
- (3) Finest quality, metallic finish prevents rust and corrosion.
- (4) They increase gas mileage.
- (5) Warning! To protect yourself against leaking carbon monoxide gas, be sure your muffler is made with continuous electric-welded seams throughout, not locked, crimped, or spot-welded.

After a hearing, the Commission found that only the third and fifth specifications were false and misleading, and issued an order that the petitioner cease and desist from:

1. Representing, directly or by implication, that the use of an automobile of a muffler having seams which are spot-welded, locked, or crimped results in greater danger of carbon monoxide gas poisoning to the occupant of such automobile than does the use of a muffler having continuous electric-welded seams;

2. Representing, through the use of the unqualified word "prevents," or any [885] other unqualified word of similar import, or by any other means, that the finish on respondent's mufflers affords permanent protection against rust or corrosion.

The petitioner challenges the order on the grounds that the proceedings are not in the public interest, and that the order is not sustained by substantial evidence.

As to the question that has been raised that this proceeding is not in the public interest, the petitioner has cited *Federal Trade Commission v. Klesner*, 280 U. S. 19, 50 S. Ct. 1, 74 L. Ed. 138 [13 F. T. C. 581], and other cases. The *Klesner* case and the other cases cited by the petitioner seem to have been cases to settle only private controversies. While the case at bar may have started as a private controversy and led to the altercation between Sherman and Grawoig and was nurtured in the ill will that still continues, we think the case as presented by the Commission was more than a private controversy. The petitioner did a substantial business, competing in interstate commerce with several firms in the merchandising of an article produced by several different companies and widely used. If the petitioner's practices were fraudulent and of a misrepresentative character, it is apparent that quite a sizable portion of the business public might be affected. Under such circumstances, we think the Commission's finding of public interest is sustained by substantial evidence. *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 217, 53 S. Ct. 335, 77 L. Ed. 706 [17 F. T. C. 664]; *Dr. W. B. Caldwell, Inc. v. Federal Trade Commission*, 111 F. (2d) 889, 891

[30 F. T. C. 1670]; *Consolidated Book Publishers, Inc. v. Federal Trade Commission*, 53 F. (2d) 942, 945 [15 F. T. C. 637].

Coming to the merits of the case, we now consider paragraph 1 of the Commission's order. This paragraph, in effect, says that the petitioner's representations that a muffler with a continuous electric-welded seam is less likely to expose to the danger of carbon monoxide gas than one that is spot-welded, locked, or crimped are false and misleading. No one testified to that effect. The only testimony we can find in the record on this point is that of Professor Pearl, a mechanical engineer, who qualified as an expert, and whose testimony is not challenged anywhere in the record. He was asked on direct examination:

Q. Now, Professor, can you say that a locked, crimped, or a spot-welded seam is as leak proof as the seams you find on these exhibits (the continuous weld seams)?

A. I do not believe I would consider them as leak proof as a continuous weld.

This testimony is diametrically opposed to the Commission's order.

On cross-examination, Professor Pearl testified that there was no danger from carbon monoxide gas leaking from any muffler made by any of the various processes if made well, that is, made without defect. This testimony does not conflict with the testimony he gave on direct examination that a muffler with continuous electric-welded seams throughout is less likely to leak than one that is spot-welded, locked, or crimped. It only confirms what would seem to us to be clear, namely, that a muffler perfectly made by either process will be free from leaks and therefore safe. This is not to say which of the processes of closing a seam on a muffler is the least likely to produce a leak.

The professor testified directly that the petitioner's product, which is a continuous electric-welded seam muffler, is the least likely to have a leak. The professor's opinion is not incredible, and coincides with our understanding of the relative value of these various processes of closing a seam. Certainly a weld all the way is more durable and less likely to leak than one that is welded only in spots. If it is good to weld it in spots, it would seem better to weld it all the way. Likewise, a fusion of the edges of the seams would seem less likely to leak than where the seams were mechanically pressed together and welded only in spots, or locked or crimped. This paragraph of the Commission's order is not supported by substantial evidence, and is contrary to the only evidence in the record. If the Commission should not credit the opinion of the expert, then there is no evidence on this point in the record, and the Commission's order is still unsupported by any evidence.

In paragraph 2 of the Commission's order, the petitioner is ordered to cease and desist from representing that the finish on its mufflers *permanently* prevents rust or corrosion. The petitioner never represented that the finish on its [886] mufflers would prevent rust *permanently*. The word "*permanently*" was interpolated by the Commission. The Commission's finding is that, "While the finish may serve to prevent rust and corrosion for a *limited period of time*, it does not afford permanent protection against such conditions." (Our emphasis.) The petitioner never said that it did afford permanent protection against such conditions. The petitioner said only that the finish prevents rust and corrosion. The Commission admits that the finish does prevent rust and corrosion for a period of time, but states the petitioner is misrepresenting the facts when it says the finish will prevent rust and corrosion *permanently*. The Commission cannot interpolate into the petitioner's representations words not there, and then find the petitioner guilty of misrepresentation because the petitioner's product does not meet the Commission's revised representations. The word "prevents" is a word of common understanding, and the common acceptance of this word carries no connotation of permanency. The petitioner will be presumed to have used the word in its ordinary and commonly accepted understanding, in the absence of any showing to the contrary. Without the word "*permanently*" interpolated, there is no misrepresentation. The word "*permanently*" is, the Commission's word, not the petitioner's. The petitioner answers for its own representations, and not those of the Commission. The evidence does not support paragraph 2 of the order.

Since we find no substantial evidence to support either paragraph, the order is vacated.

BOCKENSTETTE ET AL. v. FEDERAL TRADE
COMMISSION¹

No. 2582—F. T. C. Docket 4537

(Circuit Court of Appeals, Tenth Circuit. March 4, 1943)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—WORDS AND PHRASES, ETC.—IF LITERALLY AND TECHNICALLY TRUE.

Mere fact that words and sentences may be literally and technically true does not prevent their being framed in such a setting as to mislead or deceive so as to authorize cease and desist order of Federal Trade Commission directed against the use of such words and sentences in interstate advertising, Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

¹ Reported in 134 F. (2d) 369. For case before Commission, see 34 F. T. C. 1103.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—WORDS AND PHRASES, ETC.—“R. O. P.”—CHICK HATCHERIES.

Use of initials “R. O. P.” in interstate advertising of chick hatchery which was not an R. O. P. operator in such a manner as to lead readers to believe that hatchery belonged to association using such initials and produced eggs and chickens under association rules and regulations authorized cease and desist order of Federal Trade Commission.

WORDS AND PHRASES, ETC.—“R. O. P.”

R. O. P. is an abbreviation of U. S. Record of Performance and represents program of the National Poultry Improvement Plan administered through State agencies by Bureau of Animal Industry of the U. S. Department of Agriculture. An “R. O. P. operator” is a member of the association. An “R. O. P. chicken” or “R. O. P. stock” is a chicken or stock produced and maintained by an R. O. P. operator and loses R. O. P. designation upon leaving operator’s pens.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OF PRODUCT—CHICK HATCHERIES—LAYING PERFORMANCE.

Admission by hatchery that statement in its interstate advertising that every hen in its flock lays an egg daily was false justified cease and desist order of Federal Trade Commission directed against such advertising.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—TERMS AND CONDITIONS—CHICK HATCHERIES.

[370] Where hatchery made no claim that it actually protected its customers against all loss for 4 weeks, evidence sustained finding of Federal Trade Commission that statement in hatchery’s interstate advertising that 4 weeks’ insurance was chick buyer’s protection against losses up to 4 weeks was false and supported cease and desist order directed against such advertising.

CEASE AND DESIST ORDERS—ADVERTISING FALSELY OR MISLEADINGLY—DECEPTIVE PREREQUISITES—NATURAL AND PROBABLE RESULTS AS SUFFICING.

It is unnecessary for Federal Trade Commission to find that actual deception resulted before issuing cease and desist order against false advertising, but it is sufficient to find that natural and probable result of such advertising is to cause one to do that which he would not otherwise do.

FINDINGS AND CONCLUSION OF COMMISSION—IF SUPPORTED BY EVIDENCE—AS BINDING ON COURT.

Findings of fact and conclusion of Federal Trade Commission finding support in the evidence are binding upon Circuit Court of Appeals.

(The syllabus, with substituted captions, is taken from 134 F. (2d) 369.)

On petition to review and set aside order of Commission, order enforced.

Mr. George M. Brewster, of Topeka, Kans., for petitioners.

Mr. Joseph J. Smith, Jr., of Washington, D. C. (*Mr. W. T. Kelley*, of Washington, D. C., on the brief), for respondent.

Before *PHILLIPS, BRATTON, and HUXMAN, Circuit Judges.*

HUXMAN, *Circuit Judge*, delivered the opinion of the court.

By this appeal, petitioners challenge a cease and desist order of the Federal Trade Commission directing them to cease and desist from practices in commerce in violation of the Federal Trade Commission Act, 15 U. S. C. A., sec. 45.

Petitioners own and operate a large hatchery at Sabetha, Kans. They hatch eggs and sell the baby chicks in many States of the Union. They engage intensively in advertising by use of the mails, newspapers, and by other methods usually employed by advertisers. The Commission found as a fact that the following statements and representations made by petitioners were false and misleading:

Each female has made her egg record in a previous year in an egg-laying contest, under the R. O. P. supervision, or has our home trapped record.¹

They are a choice group of individually wing-banded females from a select group of R. O. P. Rhode Island Whites and individually pedigreed hens produced by our Contest Pen Mating.

Individually pedigreed males from R. O. P. trap nested dams head these matings.

9,400 More Eggs Per Year from Each 100 Hens.

These gratifying results are being obtained by our customers with Blue Ribbon Chicks.

Every hen in these flocks lay an egg daily.

Based on actual unsolicited letters, we don't believe there is a breeding farm or hatchery anywhere that can duplicate our record for customer results. Figures taken from these customers' letters prove that blue ribbon breeding is enabling our customers to produce eggs at from $\frac{1}{3}$ to $\frac{1}{2}$ the cost of producing them with birds of ordinary breeding. Our 1940 chicks will do even better.

4 Weeks' insurance chick buyers' protection against losses up to 4 weeks.

Petitioners admittedly made the representations complained of in their advertisements. Their contention is that the state [371] ments are true and not misleading, and that the findings and conclusions of the Commission are without support in the evidence.

Words and sentences may be literally and technically true and yet be framed in such a setting as to mislead or deceive. R. O. P. has a well defined and generally understood meaning in the chicken and egg production industry. An R. O. P. operator is one who belongs to the Association, subscribes to its rules, and produces eggs and chickens under its rules and regulations. An R. O. P. chicken is one produced and maintained by an R. O. P. operator. When it leaves an R. O. P. operator's pens, it ceases to be an R. O. P. chicken. Petitioners admit

¹ R. O. P. is an abbreviation of U. S. Record of Performance. It represents a program of the National Poultry Improvement Plan for the improvement of poultry produced in hatcheries. It is administered through State agencies by the Bureau of Animal Industry of the U. S. Department of Agriculture. Members of the Association are called R. O. P. operators and chickens produced and maintained by such an operator under the rules and regulations of the Association are R. O. P. stock. They cease to be R. O. P. stock when they leave the pens of an R. O. P. operator or when he quits the Association.

that the term R. O. P. has a trade value. It would be only natural for the ordinary person who read that petitioners' hens "are a choice group of individually wing banded females from a select group of R. O. P. Rhode Island Whites," or that "individually pedigreed males from R. O. P. trap nested dams head these matings," to conclude that the advertiser was an R. O. P. operator and that the stock was R. O. P. stock. Petitioners are not R. O. P. operators. Neither do they have R. O. P. chickens as that term is used in the business. The Commission's finding that the statements referring to R. O. P. are misleading finds ample support in the record.

Petitioners admit that the representation that every hen in these flocks lays an egg daily is "rather broad." They attempt an explanation as to how this statement came to be made. Be that as it may, it was made, and the effect thereof is clear. It justifies the finding and order of the Commission based thereon.

It is urged that the finding that the representation that "4 weeks' insurance chick buyers' protection against losses up to 4 weeks," was false, is not supported by the evidence. It is admitted that this exact language was used and disseminated by advertisement among prospective buyers. There is no claim that petitioners actually protected their customers against all loss for 4 weeks. It is urged that this was not a representation that petitioners would indemnify a purchaser against all loss for 4 weeks and that it would require "a tremendous stretch of the imagination to give it such a meaning." It appears to us that it would require a breakable stretch of the imagination to conclude that this language meant anything other than that it insured against all loss for 4 weeks.

Throughout their brief, petitioners stress the fact that there is no evidence that any person was actually deceived by these advertisements. There is some evidence that persons who read the advertisements drew an erroneous conclusion therefrom. It is not necessary, however, for the Commission to find that actual deception resulted. It is sufficient to find that the natural and probable result of the challenged practices is to cause one to do that which he would not otherwise do, *Pep Boys—Manny, Moe & Jack, Inc. v. Federal Trade Commission*, 122 F. (2d) 158 [33 F. T. C. 1807]; *Brown Fence & Wire Co. v. Federal Trade Commission*, 64 F. (2d) 934 [17 F. T. C. 680], and that the matter is of specific public interest. *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 [17 F. T. C. 664]; *Federal Trade Commission v. Raladam*, 283 U. S. 643, 646 [15 F. T. C. 598].

Other findings of the Commission are challenged as not being supported by evidence. We have examined the evidence upon which each finding rests, with particular care. It would serve no useful purpose

and would only unnecessarily encumber the record and legal publications to delineate in detail all the evidence and inferences reasonably deducible therefrom upon which these findings rest. It is our conclusion that the findings of fact and the conclusions of the Commission find support in the evidence and are therefore binding on us.

The order of the Commission will be enforced.

SALT PRODUCERS ASS'N, ET AL. v. FEDERAL TRADE COMMISSION¹

No. 7909—F. T. C. Docket 4320

(Circuit Court of Appeals, Seventh Circuit. March 8, 1943)

CEASE AND DESIST ORDERS—EXTENT—CONCERT OF ACTION TO MONOPOLIZE AND SUPPRESS COMPETITION—PRICE FIXING AND PRICE MAINTENANCE—COMMON COURSE OF ACTION—ILLEGAL CONTRACTUAL ARRANGEMENTS ONLY AS PROPERLY EMBRACED.

Where salt companies and salt producers association were charged with forming a combination to monopolize and to suppress competition in sale of salt and Federal Trade Commission made findings against the salt companies and the association, Commission's order directing the companies to cease and desist from cooperating in any common course of action, mutual agreement or conspiracy to fix or maintain prices, was modified by adding the word "planned" before the phrase, "common course of action," so that only illegal contractual arrangements would be subject to contempt proceeding.

CEASE AND DESIST ORDERS—EXTENT—CONCERT OF ACTION TO MONOPOLIZE AND SUPPRESS COMPETITION—PRICE FIXING AND PRICE MAINTENANCE—ZONE PRICE SYSTEMS.

[355] Where Federal Trade Commission found that salt companies established agreed zone system for purpose of establishing fixed delivered prices in zones, the Commission had authority to prohibit the establishment, through a combination or contract, of a similar Nation-wide zone system for the respective salt companies, but the companies were not to be denied all right to the use of zone delivered price basis.

APPELLATE PROCEDURE AND PROCEEDINGS—JUDICIAL NOTICE—POSTAL ZONES AND PRICES—CEASE AND DESIST ORDERS—CONCERT OF ACTION TO MONOPOLIZE AND SUPPRESS COMPETITION—ZONE PRICE SYSTEMS.

In determining propriety of order of Federal Trade Commission prohibiting salt companies from establishing, through a combination or contract, of a similar Nation-wide zone system for purpose of establishing fixed delivered prices in zones, court could take judicial cognizance of fact that the Government Postal Service had established statutory zones and uniform prices had been fixed within the zones, and that railroad tariffs were also based on zones.

¹ Reported in 134 F. (2d) 854. For case before Commission, see 34 F. T. C. 88.

CEASE AND DESIST ORDERS—EXTENT—PRICE FIXING—DELIVERED NATION-WIDE PRICE ZONE SYSTEM—PROHIBITION AS LIMITED TO ESTABLISHMENT THROUGH CONSPIRACY.

Where Federal Trade Commission found that salt companies had fixed zone system for purpose of establishing fixed delivered prices in zones, Commission's order prohibiting the establishment of similar Nation-wide zone system for salt companies was restricted to prohibition of uniform delivered price zones established through conspiracy.

CEASE AND DESIST ORDERS—EXTENT—CONCERT OF ACTION—ILLEGAL RESTRAINTS—PRICE FIXING—EXCHANGE OF PRICE LISTS, INVOICES AND RECORDS—PROHIBITION LIMITED TO, AS ELEMENTS OF CONSPIRACY.

Where salt companies had admittedly established illegal restraint, Federal Trade Commission had authority to prohibit the exchanging of price lists, invoices, and other records of sale showing quantity, current prices and terms, and conditions of sale by salt companies to dealers and distributors as part of a conspiracy but did not have authority to prohibit altogether the exchange of such matters. Sherman Anti-Trust Act, 15 U. S. C. A. secs. 1-7, 15 note.

CEASE AND DESIST ORDERS—EXTENT—CONCERT OF ACTION—ILLEGAL RESTRAINTS—PRICE FIXING—PRODUCTION—CURTAILMENT—OR REGULATION AS PART OF CONSPIRACY.

Where salt companies admittedly established illegal restraints, Federal Trade Commission was acting within its power when it directed a cessation of any conspiracy to curtail or regulate the production of salt, for although the production of salt is a local transaction an agreement between many producers of diverse citizenship to limit their respective production is an "unfair method of competition" in "interstate commerce." Sherman Anti-Trust Act, 15 U. S. C. A. secs. 1-7, 15 note.

CEASE AND DESIST ORDERS—EXTENT—CONCERT OF ACTION—ILLEGAL RESTRAINTS—ACTS LAWFUL APART FROM.

Where salt companies had admittedly established illegal restraints, the salt companies were entitled to know exactly what they were prohibited from doing, by cease and desist order of Federal Trade Commission, and an order enforcing the Commission's order must not invade any legal rights which belong to the salt companies when separated from the illegal conspiracy. Sherman Anti-Trust Act, 15 U. S. C. A. secs. 1-7, 15 note.

(The syllabus, with substituted captions, is taken from 134 F. (2d) 354)

On petition for review of order of Commission, order in accordance with opinion.

Mr. James B. Wescott and *Mr. L. M. McBride*, both of Chicago, Ill., *Mr. Frederic R. Sanborn*, of New York City, *Mr. W. H. Mandeville*, of Elmira, N. Y., *Mr. Frank J. Madden*, of Chicago, Ill., *Mr. J. Porter Henry*, of St. Louis, Mo., *Mr. Lester E. Waterbury*, of New York City, *Mr. Thomas A. Ballantine*, of Louisville, Ky., *Mr. Wm. D. P. Carey*, of Hutchinson, Kans., *Mr. Louis H. Hall*, of New York City, and *Mr. Henry E. McElwain, Jr.*, of Louisville, Ky., for petitioners.

Mr. Walter B. Wooden, assistant chief counsel, and Mr. W. T. Kelley, chief counsel, for Federal Trade Commission, both of Washington, D. C., for respondent.

Before EVANS, SPARKS, and KERNER, *Circuit Judges*.

EVANS, *Circuit Judge*:

This petition, to review a Federal Trade Commission cease and desist order, challenges simply the phraseology of the order and not the issuance of the order.

The petitioners are 18 salt companies and the Salt Producers Association.

A complaint filed against petitioners and others (some since dissolved), in September 1940 charged a combination, formed in October 1935 to monopolize, and to sup[356]press competition in, the sale of salt, to fix uniform prices, to establish zones to aid in fixing of prices, to curtail production of salt, to exchange price lists through the Association in order to establish the prices at which salt is sold, and to exchange information relative to conditions of sales.

The petitioners, after filing individual answers wherein each denied the allegations of the complaint, withdrew them and filed similar and very brief, individual substitute answers.¹ Therein "they admit (ted) all of the material allegations of fact set forth in said complaint and waive (d) all intervening procedure and further hearing as to the said facts."

Thereupon the Federal Trade Commission made detailed findings of fact and a conclusion, and entered the cease and desist order, the form and substance of which are here assailed. The provisions of said order are here stated, in excerpt form, and the italicized portions are the parts contested:

* * * (petitioners) * * * in connection with the offering for sale, sale, and distribution of salt in commerce, * * * do forthwith cease and desist from entering into, continuing, or carrying out, or directing, instigating, or cooperating in, *any common course of action*, mutual agreement, combination, or conspiracy, to fix or maintain the prices of salt or curtail, restrict, or regulate the production or sale thereof, and from doing any of the following acts or things pursuant thereto:

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

(4) *Exchanging, directly or through the Salt Producers Association, or any other agency or clearing house, price lists, invoices, and other records of sale showing the quantity, current prices and terms and conditions of sale allowed by respondent corporations to dealers and distributors;* provided, however, that nothing herein shall prevent the respondent association from collecting and

¹ Stevenson Co. filed a new, very detailed answer.

disseminating to the respective respondent manufacturers figures showing the total volume of sales of salt without disclosing the sales volume of individual producers;

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

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

I. "*Common course of action.*"—The first complaint is as to the phrase "common course of action," appearing in the preamble, directing that petitioners desist from "any common course of action, mutual agreement, combination, or conspiracy, to fix or maintain the prices of salt or curtail, restrict, or regulate the production or sale thereof, * * *." Petitioners assert a common course of action is thus prohibited whether or not it be connected with a *conspiracy*. And the facts of the *complaint*, of the Federal Trade Commission, admitted by the petitioners, only covered conspiracies *per se*, and so would not support an order such as this, which could prohibit action to foster fair competition, and which might cover *accidental* and *coincidental* identical action by all.

They urge that "Where a common course of action occurs as the natural result of competition and is not connected with or related to a 'mutual agreement, combination or conspiracy,' the continuance of such common course of action is not prohibited by law."

Since the complaint does not cover the prohibition against a common course of action, and F. T. C. orders may comprehend only matters covered by the complaint,² such a prohibition would be invalid, so they argue.

They also assert that the prohibition against a "common course of action" is novel in this case. True, it was used once before, but only in conjunction with the phrase "*pursuant to conspiracy.*"

The F. T. C. insists on the inclusion of this phrase "common course of action." Petitioners are uncompromisingly opposed to it. The parties seem to be pretty much agreed as to the acts which are sought to [357] be condemned by the order, but they fail, or refuse, to agree upon the precise language which embodies the thought upon which they are agreed.

More accurately, respondent says its language conveys the precise thought involved. In essence, petitioners contend "common course of action" connotes, and includes, common action by the parties, occurring through pure happenstance. Respondent says it does not mean similar action, undertaken independently without previous agreement therefor. The words used in apposition to the phrase

² *F. T. C. v. Gratz*, 253 U. S. 421; *Wrisley Co. v. F. T. C.*, 113 F. (2d) 437.

"common course of action" ("agreement, combination or conspiracy") all contain the element of mutually planned action, which fact would tend to support respondent's construction of the language it uses.

But, since petitioners contend they may legally only be barred from "*planned*" mutual action,³ and the F. T. C. says that is all its order is intended to accomplish,⁴ it would seem advisable and fair to modify and amend that phrase of the order by adding the word "*planned*" before the phrase "common course of action" so that only illegal *contractual* arrangements will be subject to contempt proceedings. The word "*planned*" as here used is intended to cover any "cooperative" or "concerted" action by petitioners to fix prices and curtail production.

II. "*Establishing delivered price zones.*"—Paragraph "(3)" of the order prohibits the establishment of uniform prices for specified zone areas. Petitioners asked that this paragraph be eliminated from the order, or at least modified to permit quotation of prices on "delivered price basis."

It is argued the zone system of prices has many advantages to industry—it equalizes prices to various customers and thus prevents discrimination; it facilitates quotation of "delivered" prices.

Respondent construes its paragraph "(3)" in this way:

It does not unqualifiedly prohibit quotations on a delivered price basis and for delivered price zones. * * * In other words it is only when the result is to make identical the delivered prices of the respective producers that such quotations are forbidden. There is nothing in the order to prohibit any producer from quoting a delivered price, provided he does not make it identical with his competitors' prices under a zone system which was admittedly set up for that purpose.

It points out that the complaint and findings reveal an *agreed* system of zones and *cooperation* in maintenance of prices within the zones. It says:

"It is not contended that cooperation by petitioners pursuant to a preconceived plan, understanding, agreement or any expressed mutual undertaking, by whatever name it may be described, may not be prohibited. To the extent, however, that cooperation is under a preconceived plan, agreement or understanding it constitutes a "mutual agreement, combination or conspiracy," and is prohibited by the order without the use of the term "common course of action." But to the extent that continuing or entering into a common course of action applies to acts unrelated to an express mutual undertaking, resulting from independent activity and produced by natural competing forces, that provision of the order is beyond the power and jurisdiction of the Commission.

"* * * To the extent that any common course of action is the continuation of a conspiracy, or is pursuant to an agreement or understanding between any of petitioners, it is prohibited by the order without employing the phrase 'any common course of action.'"

"* * * The order does not prohibit a common course of action or 'an independent activity' unrelated to petitioners' admitted combination. * * *

"Needless to say the Commission has no thought that it can or should interfere with the independent or competitive determination of prices or production policy by the petitioners and the order is not fairly susceptible of such interpretation. The legal and economic concept of price fixing automatically excludes independent action. Petitioners assume without warrant for purposes of their argument that the legal and economic concept may include it. The idea that petitioners might be proceeded against for violation of the order because of such independent competitive determination is grotesque and would hardly occur to any one who in good faith acts independently and competitively."

It was specifically alleged and admitted that these delivered price zones were established by agreement and in order "to aid in the establishment and fixing of prices of salt." It was specifically alleged and admitted that the producers had "agreed to co-operate, and have cooperated, in the maintenance of the various prices deter[358]mined for particular zones." If, under these circumstances, the Commission has not the power to prevent the continued use of such zones and the quotation of delivered prices uniform within such zones, then it can not outlaw the very device which created the "uniform prices" of the admitted combination and which device was admittedly created by agreement for that purpose.

Respondent would not only prohibit agreements of petitioners as to identical zones and prices, but challenges the legality of the establishment of any zone-price schedule, individually by the petitioners as wrongfully abolishing "natural factors" (distance of purchaser from point of production) in determination of prices.

Petitioners concede they may be barred from establishing *agreed* zones delivered price rates, but ask for the right to have zone prices.

The complaint, paragraph 24, charges combinations and agreements to fix uniform prices in the United States and in aid thereof have agreed to, and have, established zones and have cooperated in the maintenance of various prices determined for the particular zones. The Commission's findings found as a fact that the agreed zone system was for the purpose of establishing fixed delivered prices in zones.

We are convinced that petitioners should not be denied all right to the use of the "zone" delivered price basis. The Commission is, however, within its authority when it condemns and prohibits the establishment, through a combination or contract, express or implied, of a similar, Nation-wide zone system for the respective petitioners. The complaint discloses the Commission's aim to eradicate and prohibit all *concert* of action by these petitioners, looking to the establishment and fixation of prices. There was no indication in the complaint that they were assailing the zone system *per se* as an unfair method of competition by *one* manufacturer in relation to two purchasers of his salt, in the same zone, where the freight costs are averaged, and one bears a greater burden than the actual freight cost incurred.

If the zone system *per se* is to be condemned, there ought to be a hearing by the Commission and a finding on the precise issue of the unfairness of such a commercial practice.

We must take judicial cognizance of the fact that the Government postal service has established statutory zones and uniform prices fixed within said zones (39 U. S. C. A. secs. 292-3). Likewise, railroad tariffs are also based on zones.

We therefore restrict paragraph "(3)" to a prohibition of uniform delivered price zones established *heretofore*, admittedly through the conspiracy.⁵

III. "*Exchanging price lists * * * and other records of sale * * **."—The order forbids "pursuant" to the conspiracy, etc., the exchanging of "price lists, invoices, and other records of sale showing the quantity, current prices and terms and conditions of sale allowed by respondent corporations to dealers and distributors * * *."

Both parties point to and rely on Supreme Court decisions⁶ to support their positions.

The Commission contends that the exchange of price lists was, here, no innocent enlightenment of trade practices, but was an indispensable aid to an admitted conspiracy to fix prices.

In the Sugar Institute Case, the court made clear its position on the dissemination of trade information.

See also *Maple Flooring Association v. United States*, 268 U. S. 563. We quote therefrom:

It is the consensus of opinion of economists and of many of the most important agencies of Government that the public interest is served by the gathering and dissemination, in the widest possible manner, [359] of information with respect to the production and distribution, cost and prices in actual sales, of market commodities, because the making available of such information tends to stabilize trade and industry, to produce fairer price levels and to avoid the waste which inevitably attends the unintelligent conduct of economic enterprise. * * * Competition does not become less free merely because the conduct of commercial operations becomes more intelligent through the free distribution of knowledge of all the essential factors entering into the commercial transaction. * * *

Equally clarifying are the two opinions cited by respondent: The American Column Case and the American Oil Case, *supra*. Both held that the agreements for dissemination of price statistics and numerous other business practices there under consideration, constituted such a combination in restraint of trade as to fall within the condemnation of the Sherman Anti-Trust Act.

In the instant case, we have an illegal restraint, by admission of the guilty parties. But, conceding such to be the fact, once the conspiracy and agreement are outlawed, and recurrence thereof subject to contempt action, future action on petitioners' part, disassociated with conspiracy or unfair competition, is permissible. It is only when

⁵ The complaint, listing the petitioners, show them to have their "principal places of business" in widely varying places. If the zones were of areas circumscribing (concentric) with these focal places there could not be identical zones for the respective petitioners. It may be, however, that *all* the salt is processed in, say, Utah, in which case establishment of identical zones could logically occur.

⁶ Commission relies on *Amer. Column Co. v. U. S.*, 257 U. S. 377; *U. S. v. Amer. Linseed Co.*, 262 U. S. 371.

Petitioners rely on *Maple Flooring Assn. v. U. S.*, 268 U. S. 563; *Sugar Institute, Inc. v. U. S.*, 297 U. S. 553.

such dissemination of information is integral with a scheme to restrict competition, and used as an instrumentality therefor, that the court will forbid such public announcement of statistics to the companies engaged in selling a similar product.

Some phases of this exchange of statistical information are legal, and not within the condemnation of the Anti-Trust Act. We therefore conclude that the order of the F. T. C. goes beyond its permissible scope in paragraph "(4)" if it be construed to prohibit altogether the exchange of "price lists, invoices, and other records of sale showing the quantity, current prices and terms and conditions of sale allowed by respondent corporations to dealers and distributors." But, if such action continues as a part of the, or a, conspiracy, it constitutes an illegal restraint of trade.

The same conclusion is true as to paragraph "(5)."

IV. The last objection to the form of the Commission's order concerns the prohibition contained in paragraph "(6)" which forbids "Curtailling, restricting, or regulating the quantity of salt to be produced and sold by any respondent corporation by any method or means during any given period of time * * *."

Petitioners contend that under the Supreme Court decision of *F. T. C. v. Bunte Bros.*, 312 U. S. 349 [32 F. T. C. 1848], the Commission has no power or authority to control the purely intrastate activity of production of salt, and even if the Commission had power, it would be exceeding such power to forbid the petitioners to regulate and restrict the amount of production.

Respondent answers that although the production of salt is a local matter, its order in no way affects the *production* of salt—it is directed to a practice of petitioners, which *practice* affects the production of salt; that the petitioners are producers, located in many States, and the *commerce between said States* is directly and actually affected by the conspiracy to restrict production. The Commission also points out that it unquestionably has the authority to prohibit a price-fixing conspiracy, and the prime element of any price-fixing conspiracy is the ability to regulate production, therefore it has the right to reach and regulate any manifestation of and instrumentality used in aid of such a price-fixing conspiracy. It also points out that the order is directed to prohibit a curtailment of *sales* as well as production.

Here again, respondent stresses the fact that this paragraph "(6)," as with all the preceding paragraphs, "is subordinate to and limited by the general preamble and reference to agreement, combination, conspiracy, and common course of action," and "the preamble shows that paragraph (6) applies only when the object of the combination or common course of action is 'to fix or maintain the prices of salt or curtail, restrict, or regulate the production or sale thereof,'"

"Paragraph (5) has no application to independent, noncollusive restriction of production by the legal owner of any salt plant, but only to such restriction as is 'pursuant' to an agreement, combination, conspiracy or common course of action."

Respondent was acting within its legal power when it directed a cessation of any conspiracy to curtail or regulate the production of salt. The production of salt is a local transaction, but an *agreement* between many producers, of diverse citizen [360] ship, to limit their respective productions is an unfair method of competition *in* interstate commerce. The Bunte case, *supra*, is not, we think, a holding to the contrary. It was there held that the Commission had no authority to regulate the intrastate sale of candy in break and take packages, although such sales affected interstate commerce. We are not here concerned with either intrastate production or sales *per se*; we are confronted with a conspiracy to directly control interstate commerce and sales.

Our conclusion is that respondent's order would be entirely proper if it were clearly limited to acts done pursuant to the conspiracy of the parties. It is, however, of the utmost importance that the petitioners know exactly what they are prohibited from doing, for their failure to comply, subjects them to punishment for contempt, which punishment should, and doubtless will be, substantial. Petitioners must know definitely what the enforcement order prohibits them from doing. Also it must be clear that such enforcement order does not invade any legal rights which are theirs, when separated from the illegal conspiracy, to which they admittedly were parties.

Respondent is entitled to an order. It will draw a proposed order, modifying its present order to meet the views expressed in this opinion and submit the same to petitioners before submitting the same to this court. Petitioners will have ten days within which to consent or file objections to the order thus submitted by respondent.

GRAND RAPIDS FURNITURE CO., v. FEDERAL TRADE COMMISSION¹

No. 8135—F. T. C. Docket 4463

(Circuit Court of Appeals, Third Circuit. March 10, 1943)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE AND CORPORATE NAMES.—"GRAND RAPIDS" FOR FURNITURE NOT THERE MADE.

Evidence and findings sustained order of Federal Trade Commission directing furniture company, in connection with sale or distribution in interstate commerce of furniture, to cease and desist from using words

¹ Reported in 134 F. (2d) 332. For case before Commission, see 35 F. T. C. 152.

"Grand Rapids" as part of its corporate name or from so designating furniture not in fact manufactured in Grand Rapids, Mich., or from likewise misrepresenting the place of origin of the furniture. Rules of Circuit Court of Appeals, Third Circuit, rule 20 (10).

(The syllabus, with substituted caption, is taken from 134 F. (2d) 332)

On petition to review a cease and desist order of Commission, order affirmed.

Mr. Aaron Heller, of Passaic, N. J. (*Mr. Sol Eigen*, of Passaic, N. J., on the brief), for respondent.

Mr. Eugene W. Burr, of Washington, D. C. (*Mr. W. T. Kelley* and *Mr. James W. Nichol*, both of Washington, D. C., on the brief), for respondent.

Before MARIS, JONES, and GOODRICH, *Circuit Judges*.

PER CURIAM:

The order of the Federal Trade Commission directing the respondent, in connection with its offering for sale, sale, or distribution in interstate commerce of furniture, to cease and desist from using the words "Grand Rapids" as part of its corporate name or from so designating such furniture not in fact manufactured in Grand Rapids, Mich., or from otherwise misrepresenting the place of origin of such furniture, is fully supported by the Commission's findings of fact. Since our examination of the record satisfies us that these findings are in turn supported by substantial evidence the order of the Commission must be affirmed. A decree enforcing it will accordingly be entered in accordance with Rule 20 (10).

JERGENS-WOODBURY SALES CORP. v. FEDERAL TRADE COMMISSION¹

No. 9109—F. T. C. Docket 3438

(Circuit Court of Appeals, Sixth Circuit. April 10, 1943)

Final decree, pursuant to joint motion of the parties, on petition to vacate, set aside, or modify cease and desist order of the Commission in Docket 3438, September 10, 1941, 33 F. T. C. 1267, in connection with offer, etc., in commerce, of respondent's soaps, cosmetic creams, face powders, or similar products, modifying, as below set forth, paragraph 7 of the findings as to the facts in said proceeding, and paragraph 3 of said order; affirming said order as thus modified; commanding respondent, its officers, etc., in said connection to cease and desist from representing, as below set forth, that its said products, as the case may be, will prevent skin blemishes or infections from germs, will remain germ free during use, will spread farther

¹ Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 1267.

than other comparable competitive products, have any, added beneficial value on the skin by reason of their vitamin content, etc.; and requiring report of compliance, etc., as below set out.

Mr. Carl M. Jacobs, of Frost & Jacobs, Cincinnati, Ohio, and *Mr. Jerome L. Isaacs*, of Rogers, Hoge & Hill, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, Federal Trade Commission, *Mr. James T. Welch*, and *Mr. James W. Nichol*, attorneys all of Washington, D. C., for respondent.

Before HICKS, SIMONS and McALLISTER, *circuit judges*.

FINAL DECREE MODIFYING FINDINGS AS TO THE FACTS AND ORDER TO CEASE AND DESIST, AND AFFIRMING AND ENFORCING SAID ORDER AS SO MODIFIED

The petitioner herein, having filed with this court on November 6, 1941, its petition to vacate, set aside, or modify an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of September 10, 1941, under the provisions of the Federal Trade Commission Act; and a copy of said petition having been served upon the respondent; and the respondent having thereafter certified and filed with this court, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered; and the parties hereto, having filed herein their joint motion asking this court to enter a decree modifying paragraph 7 of the findings as to the facts and paragraph 3 of the order to cease and desist, affirming said order as so modified, and commanding obedience to the terms thereof as so modified and affirmed; and this court being fully advised in the premises—*now, therefore, it is hereby ordered, adjudged, and decreed* that paragraph 7 of the findings as to the facts be modified by substituting for the present draft thereof the following:

Paragraph seven: The evidence shows, and the Commission finds that respondent's facial powder and cosmetic creams are germ free when first opened and before they have been contaminated in the course of use; that such facial powder and creams do not possess sufficient bactericidal properties to warrant the representation that they will kill germs on the skin or while on the skin will prevent germ growth, infections or blemishes under ordinary conditions of use; that, when the ordinary germs present on the face or hands are added to jars of respondent's creams, the lapse of seven hours is required before the creams will free themselves of the germs so added provided no opportunity for recontamination occurs during this time; and that when such germs are added to respondent's facial powder, they will still be alive and active after the lapse of twenty-four hours.

And it is hereby further ordered, adjudged, and decreed that said order to cease and desist be modified by substituting for the present draft of paragraph 3 thereof the following:

3. Representing that its cosmetic creams will remain sterile, or that said creams will kill germs on the skin or while on the skin will prevent germ growth, infections or blemishes under ordinary conditions of use, or representing that such creams will regain their germ-free condition in any period of time less than seven hours after last use.

and that said order, as so modified, be, and the same hereby is, affirmed.

And it is hereby further ordered, adjudged, and decreed that the petitioner, Jergens-Woodbury Sales Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of its soaps, cosmetic creams, and face powders, or any products of substantially similar composition or possessing substantially similar properties, forthwith cease and desist from:

1. Representing that its facial powder will guard against or prevent skin blemishes or infection from germs, or that said powder will remain germ-free during use;

2. Representing that its facial powder will spread farther than other competitive face powders of comparable quality;

3. Representing that its cosmetic creams will remain sterile, or that said creams will kill germs on the skin or while on the skin will prevent germ growth, infections, or blemishes under ordinary conditions of use, or representing that such creams will regain their germ-free condition in any period of time less than seven hours after last use.

4. Representing in any manner whatever that petitioner's creams or soap have any added beneficial value upon the skin by reason of their vitamin content.

And it is hereby further ordered, adjudged, and decreed that, within ninety (90) days after the entry of this decree, the petitioner shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has 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 modified and affirmed, and without prejudice to the right of the Federal Trade Commission to maintain contempt proceedings for violation of this decree, 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.

DE FOREST'S TRAINING, INC. v. FEDERAL TRADE COMMISSION¹

No. 8012—F. T. C. Docket 4441

(Circuit Court of Appeals, Seventh Circuit. April 22, 1943)

METHODS, ACTS, AND PRACTICES—MISREPRESENTATION—DUTY TO DEAL FAIRLY, IN GENERAL—CORRESPONDENCE COURSES.

It is the duty of one offering training in television and allied subjects to deal fairly with the public and not to make false, deceptive, or misleading statements.

METHODS, ACTS, AND PRACTICES—MISREPRESENTATION—STATEMENTS BY SELLER—CORRESPONDENCE COURSES.

Any statements made by one offering training in television and allied subjects must be taken in their ordinary sense.

METHODS, ACTS, AND PRACTICES—MISREPRESENTATION—OPPORTUNITIES IN PRODUCT OR SERVICE AND SCIENTIFIC OR RELEVANT FACTS—WHETHER FACT OR OPINION—CORRESPONDENCE COURSES.

Statements made by one offering training in television that the beginning of a new American industry was already with us, that television was developing rapidly, that the success of a young man depended on whether he made himself ready for television now and that men who wanted steady, big-paying jobs were needed in the fast-growing television industry were statements of "fact" rather than of "opinion."

APPELLATE PROCEDURE AND PROCEEDINGS—COURT FUNCTION.

The function of the Circuit Court of Appeals is to determine whether there is [820] substantial evidence to sustain the findings of Federal Trade Commission. 15 U. S. C. A., sec. 41 et seq.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—MISREPRESENTATION—OPPORTUNITIES IN PRODUCT OR SERVICE AND SCIENTIFIC OR RELEVANT FACTS—CORRESPONDENCE COURSES.

Statements by one offering training in television that the beginning of a new American industry was already with us, that television was developing rapidly, that the success of a young man depended on whether he made himself liable for television now, and that men who wanted steady, big-paying jobs were needed in the fast-growing television industry were misleading and order prohibiting misrepresentations concerning possibilities or opportunities for employment of students or graduates of course in television was proper.

CEASE AND DESIST ORDERS—EXTENT—MISREPRESENTATION—OPPORTUNITIES IN PRODUCT OR SERVICE AND SCIENTIFIC OR RELEVANT FACTS—CORRESPONDENCE COURSES IN TELEVISION AND ELECTRONICS.

Where there was no finding and no evidence in the record to support the finding that one offering training in electronics had misrepresented the possibilities or opportunities for employment in electronics industry other than television, quoted phrase in cease and desist order "or any other branch of the electronics industry" would be stricken out.

¹ Reported in 134 F. (2d) 819. For case before the Commission, see 34 F. T. C. 902. Rehearing denied May 14, 1943.

(The syllabus, with substituted captions, is taken from 134 F. (2d) 819)

On petition for review of order of Commission, petition denied, and Commission's order modified, and as modified, affirmed.

Mr. John A. Nash and *Mr. Arthur H. Schwab*, both of Chicago, Ill., and *Mr. Horace J. Donnelly*, of Washington, D. C., for petitioner.

Mr. Allen C. Phelps and *Mr. W. T. Kelley*, chief counsel, both of Washington, D. C., for respondent.

Before KERNER and MINTON, *Circuit Judges*, and LINDLEY, *District Judge*.

KERNER, *Circuit Judge*.

Petitioner, De Forest's Training, Inc., asks us to review and set aside a cease and desist order of the Federal Trade Commission.

Petitioner is a school instructing students both by correspondence and locally in the application of electronics, embracing the public address system, radio, frequency modulation, communications, sound, television, and allied subjects. The merit of the course was not in issue.

The order was based upon a complaint issued by the Commission alleging in substance that petitioner had falsely represented, in connection with the sale of its course of study, that any man who is trained in the work of television as taught by petitioner will be ready to enter the electronic industry and be assured of lucrative employment.

In the course of its business, in order to induce the sale of its courses of instruction to high-school graduates, the petitioner, among other things, stated: "Today, the whole brilliant story of Radio's early growth, development and opportunities may repeat itself in TELEVISION." "The beginning of a new American industry is already with us." "Television, a new branch of the Electronic field, is developing rapidly." "All of the present activity in Television * * * combine to spell one word in the mind of the forward-looking, ambitious man, and that is—OPPORTUNITY!" "* * * * to the young man seeking to fit himself into this exciting new picture of modern opportunity, *everything* may depend on one factor. That is—whether he has the ambition and foresight to seize this fine chance; whether he *makes himself ready* for Television now, before its pioneering opportunities pass on into history." "After a man is trained the De-Forest way, he is ready to enter the Electronic Industry and really 'go places'." "Ambitious men who want steady, big-paying jobs *are needed* in the fast-growing TELEVISION, RADIO, and SOUND PICTURE INDUSTRY."

The complaint alleged that the foregoing statements and representations are grossly exaggerated, false, misleading and deceptive; that

television is still in its infancy; that opportunities for employment are very few; and that the demand for men trained in the television field is not large enough to warrant the petitioner's representation that graduates of its school may be readily placed in positions in such field.

Petitioner answered the complaint and after the cause had been heard upon the complaint and answer, the testimony of witnesses and supporting documentary evidence, the Commission found that petitioner's advertising contained false, deceptive [821] and misleading statements, and issued an order that petitioner cease and desist from:

1. Representing directly or by implication that there are possibilities or opportunities for employment of students or graduates of petitioner's course in the television field until substantial numbers of such students or graduates have been, and can be, employed directly in such field.

2. Representing directly or by implication that there are now, or in the near future will be, possibilities or opportunities for the employment of students or graduates of petitioner's course in the television field until the commercial development of television is sufficiently advanced to assure immediate availability of such possibilities or opportunities;

3. Misrepresenting in any manner the possibilities or opportunities for employment of students or graduates of petitioner's course in the television field or any other branch of the electronics industry.

There was evidence tending to prove that television had been the subject of research, experimentation, and development for many years; that its introduction to the general public began in 1939 at the World's Fair in New York; that it was commercially practicable and its possibilities were immense; that it would become a large and important industry, but that its commercialization depended upon action to be taken by the Federal Communications Commission with respect to authorizing its commercial development; and that when its commercial development began, large numbers of men would be employed in the production, sale, and servicing of television receivers and in various ways in connection with broadcasting of television programs and other technical aspects of the art.

There was a divergence of opinion as to when commercialization of television on a substantial scale would occur. Some witnesses felt that this was in the immediate future and that it would immediately follow the establishment of standards by the Federal Communications Commission and authorization for its introduction to the public. Others felt that the prospects were not nearly so immediate.

The Commission found that only a limited number of individuals, experienced in radio and allied problems, and a few graduates of

technical colleges and universities have been employed in television; that there have been no opportunities for the employment in the television field of petitioner's graduates; and that "no one can say with certainty when the commercial development of television will reach a stage which assures opportunities for the employment of large numbers of men."

The challenge to the order is based on the grounds that it seeks to prevent petitioner from making predictions and expressing opinions as to future events, and that the findings of the Commission are not sustained by the evidence.

The argument is that the representations were matters of opinion, not intended as statements of existing facts, but as a prophecy of things to come and even if the commercial expansion of television had not justified the predictions made for it, that fact should not condemn statements made in good faith.

It is elementary that it was petitioner's duty to deal fairly with the public and not to make false, deceptive, or misleading statements. So, too, it is clear that whatever statements are made, must be taken with and accepted in their ordinary sense.

With these principles in mind, we think the question here involved was one of fact, as distinguished from mere opinion, as is evident from the statements that the beginning of a new American industry is already *with us*; television is developing rapidly; the success of a young man depends on whether he makes himself ready for television *now*; and that men who want steady, big-paying jobs *are needed* in the fast-growing television industry.

The Federal Trade Commission Act does not charge us with the duty of considering conflicts in the evidence or the plausibility of explanations offered, nor are we permitted to substitute our judgment for that of the Commission. Our function is to determine whether there is substantial evidence to sustain the findings of the Commission. If there is, the findings are conclusive.

We agree with the Commission that the statements have the tendency to, and do, mislead and deceive a substantial portion of the public, and that the order was within the Commission's authority to issue, since it goes no further than to prohibit misrepresentations concerning the possibilities or opportunities for the employment of students or graduates of petitioner's course in the television field.

[822] The point is made that the third paragraph of the order is too broad, in that it prohibits the petitioner from representing the possibilities or opportunities for employment in other branches of the electronics industry.

There is no finding and we find no evidence in the record that the petitioner has misrepresented the possibilities or opportunities for

employment in any branch of the electronics industry other than television; consequently, the phrase "or any other branch of the electronics industry" will be stricken from the order.

The petition to set aside the order is denied and the Commission's order is modified, and, as so modified, is affirmed. The Commission may present a decree in conformity with our conclusions.

A. E. STALEY MFG. CO., ET AL., v. FEDERAL TRADE COMMISSION¹

No. 8072—F. T. C. Docket 3803

(Circuit Court of Appeals, Seventh Circuit. May 10, 1943)

PLEADING AND PRACTICE—PLEADINGS—IN GENERAL

Pleadings before Federal Trade Commission are not required to meet standards of pleadings in a court.

PLEADING AND PRACTICE—PLEADINGS—COMPLAINTS—SUFFICIENCY—IF ADEQUATE BASIS FOR STIPULATION OF FACTS.

Where complaint before Federal Trade Commission charged cause of action in words of statute, and on basis of complaint parties were able to stipulate all facts in case, complaint was sufficient. Clayton Act, sec. 2 (a, b), as amended by Robinson-Patman Price Discrimination Act, 15 U. S. C. A., sec. 13 (a, b).

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—COMPETITIVE PREREQUISITES.

To sustain an order of Federal Trade Commission directing corporation to cease and desist from price discrimination practices, evidence must disclose discrimination as to price and commodities sold in commerce and that such discrimination substantially lessens competition or tends to create a monopoly in commerce. Clayton Act, sec. 2 (a, b), as amended by Robinson-Patman Price Discrimination Act, 15 U. S. C. A. 13 (a, b).

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—COMPETITIVE PREREQUISITES—IF ABSENT.

Finding that manufacturing company discriminated in price of commodity sold in commerce, in absence of finding that such discrimination had effect substantially to lessen competition or tend to create a monopoly, was insufficient to sustain cease [454] and desist order of Federal Trade Commission. Clayton Act, sec. 2 (a, b), as amended by Robinson-Patman Price Discrimination Act, 15 U. S. C. A., sec. 13 (a, b).

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—CONGRESSIONAL INTENT.

Congress in enacting Clayton Act and Robinson-Patman Price Discrimination Act did not intend to make unlawful every discrimination, but only those discriminations which substantially affected competition. Clayton Act, sec. 2 (a, b), as amended by Robinson-Patman Price Discrimination Act, 15 U. S. C. A., sec. 13 (a, b).

¹ Reported in 135 F. (2d) 453. For case before Commission, see 34 F. T. C. 1302.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—SAVING PROVISOS—DISCRIMINATING IN GOOD FAITH TO MEET LOWER PRICES OF COMPETITOR—DEFENSE OF—RIGHT TO FINDING ON.

In proceedings before Federal Trade Commission on charge that manufacturer was unlawfully making price discriminations, manufacturer was entitled to finding on defense that discriminations were made in good faith to meet lower prices to competitor. Clayton Act, sec. 2 (a, b), as amended by Robinson-Patman Price Discrimination Act, 15 U. S. C. A., sec. 13 (a, b).

(The syllabus, with substituted captions, is taken from 135 F. (2d) 453)

On petition for review of order of Commission cause remanded.

Mr. Charles C. Le Forgee and *Mr. Carl R. Miller*, both of Decatur, Ill. (*Mr. Louis A. Spiess*, of Washington, D. C. and *Le Forgee, Samuels & Miller*, of Decatur, Ill., of counsel), for petitioners.

Mr. Walter B. Wooden, assistant chief counsel, and *Mr. W. T. Kelley*, chief counsel, for Federal Trade Commission, both of Washington, D. C., for respondent.

Before EVANS, MAJOR, and MINTON, *Circuit Judges*.

MINTON, *Circuit Judge*.

The petitioners seek to review an order of the Federal Trade Commission which ordered them to cease and desist from certain practices found by the Commission to be in violation of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C. A. Sec. 13 (a) (b)). The petitioners challenge the sufficiency of the complaint, the sufficiency of the evidence to support the findings, and the validity of the Commission's conclusions as to discriminatory conduct.

The petitioners filed a timely motion to dismiss the complaint because it was vague, indefinite and uncertain, and alleged only conclusions. The Commission denied the motion. The paragraph of the complaint that charges the discriminations we set forth in the footnote.¹ In the subsequent paragraphs it is alleged that these acts of discrimination substantially lessen competition and tend to create a monopoly in commerce in violation of the statute.

While the complaint charges the cause of action in the words of the statute, we think this was sufficient to advise the petitioners of the nature in general of the complaint. Pleadings before the Commis-

¹ "Paragraph Five: Since June 19, 1930, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption, or resale within the several States of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the prices at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers."

sion are not required to meet the standards of pleadings in a court where issues are attempted to be framed with a measure of exactness which is designed to limit the broad sweep of investigation that characterizes the proceedings of administrative bodies. *Consumers Power v. National Labor Relations Board*, 113 F. (2d) 38, 43; *National Labor Relations Board v. Remington Rand Co.*, 94 F. (2d) 862, 873; *Sunbeam Electric Manufacturing Co. v National Labor Relations Board*, 133 F. (2d) 856. The petitioners were able to take the complaint and stipulate all of the facts in this case. That would seem to be quite per[455]suasive evidence that the petitioners were not misled, but knew full well what the proceedings were all about. We think under the circumstances of this case that petitioners were sufficiently advised of the issues which they were required to meet. The complaint was sufficient.

To sustain an order based upon this complaint, there must be discrimination as to price in commodities sold in commerce, and such discrimination in price must substantially lessen competition or tend to create a monopoly in commerce. If we assume that the Commission properly found that there was discrimination in price of commodities sold in commerce, we look in vain for the other element, that such discrimination in price had the effect "substantially to lessen competition or tend to creat a monopoly." There must be some showing of facts or circumstances that would warrant a finding, and the finding must be made, that the discrimination had the effect substantially to lessen competition or tend to create a monopoly. Clearly, Congress meant something besides the mere showing of discrimination itself.

That the Commission has clearly misapprehended the required elements to be found to sustain the required allegations of the complaint is manifest by the statement in its "Conclusion":

The aforesaid discriminations in price by respondents in the sale of glucose or corn syrup unmixed, as herein set forth, have resulted, and do result, in substantial injury to competition among purchasers of glucose by affording material and unjustified price advantages to some purchasers and not to others, and violate subsection (a) of section 2 of an act of Congress * * *.

The Commission seems to think that this element of the offense is a conclusion that follows from discrimination. But it takes discrimination plus the other element as to substantially lessening competition or tending to create a monopoly to sustain the complaint. The latter elements are not conclusions to be drawn from the facts of discrimination. They are essential additional elements of fact that must be proved and incorporated in the findings. Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent. A showing of discrimination in price is

not enough.² There must be evidence to support a finding, and there must be a finding based on that evidence, to show wherein competition is substantially lessened or monopoly fostered. It is not every discrimination that is unlawful. Congress knew that all discriminations might have some effect upon competition, but Congress was not dealing with the minor effects of discrimination. The discrimination had to be such that it substantially affected competition. *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 356, 42 S. Ct. 360, 66 L. Ed. 653. The Commission has failed to make a finding covering these essential elements of the cause of action.

If there were a finding covering these elements essential to support the order, we find no evidence in the record to support such a finding. There should be evidence to prove in what respect the acts of price discrimination substantially lessen competition or promote monopoly. The Commission cannot depend upon a showing of discrimination alone. Congress was not outlawing discrimination. It was outlawing discrimination only when such discrimination was shown to have substantially lessened competition or promoted monopoly.

As this case is to be remanded to the Commission for further proceedings, we will direct the Commission to give fur- [456], ther consideration to the defense claimed by the petitioners that such discriminations as they made were made in good faith to meet the lower price of a competitor. We find in the record evidence directed to this defense. The Commission made some subsidiary findings touching the evidence of this claimed defense but did not make any finding as to the ultimate fact of whether the defense had been made out. We think that in the interest of clarity and fair and proper procedure, the Commission should make a finding of fact upon this evidence as to whether or not this claimed defense is made out. To this the petitioners are entitled. *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 197, 61 S. Ct. 845, 85 L. Ed. 1271; *Federal Trade Commission v. Curtis Pub. Co.*, 260 U. S. 568, 580, 43 S. Ct. 210, 67 L. Ed. 408 [5 F. T. C. 599]; *A. E. Staley Mfg. Co. v. Secretary of Agriculture*, 120 F. (2d) 258; *Saginaw Broadcasting Co. v. Federal*

² "It must be always remembered that no discrimination in price is illegal under section 2 (a) if it does not have the effect of suppressing or injuring competition in one of the respects required by the section. Section 2 (a) prohibits unjustified discriminations in price where the effect may be:

"(1) To substantially lessen competition or tend to create a monopoly in any line of commerce. This language requires more than a mere logical or conceivable possibility of effect on competition, and the Supreme Court has stated the meaning of these words as follows: '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.' [*Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 356-357.]" *Henry Ward Beer*, *Federal Trade Law and Practice* (1942) p. 123.

Communications Commission, 96 F. (2d) 554, 563; *Tri-State Broadcasting Co. v. Federal Communications Commission*, 96 F. (2d) 564, 568.

We think the ends of justice can best be served by remanding the case to the Commission for further consideration and hearings if necessary, in order to show with more clarity, if the Commission can, wherein the discriminations occur and how they substantially lessen competition and promote monopoly, and for proper findings thereon; and for consideration of the defense urged by the petitioners, and for findings in relation thereto. The cause is remanded to the Commission to proceed as it may be advised in the light of this opinion.

ARON, ET AL. v. FEDERAL TRADE COMMISSION¹

No. 3127—F. T. C. Docket 4808

(District Court, Eastern District of Pennsylvania. May 17, 1943)

INJUNCTIVE PROCEEDINGS TO RESTRAIN COMMISSION—HEARINGS ON COMPLAINTS.

Federal District Court did not have jurisdiction to enjoin the holding of hearings and taking of testimony in a proceeding before the Federal Trade Commission on ground that acts charged in Commission's complaint were not in themselves unfair acts or practices in commerce and that therefore the Commission was without jurisdiction. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

INJUNCTIVE PROCEEDINGS TO RESTRAIN COMMISSION—DISTRICT COURTS.

Federal District Court is without jurisdiction to enjoin any proceedings before the Federal Trade Commission.

FEDERAL TRADE COMMISSION ACT—UNFAIR ACTS AND PRACTICES UNDER—JURISDICTION.

Jurisdiction to determine what constitutes unfair acts and practices in commerce, within meaning of Federal Trade Commission Act, is vested exclusively in the Federal Trade Commission, and District Court may not substitute its jurisdiction for that of the Commission to determine whether acts and practices charged in Commission's complaint constitute unfair acts or practices which Commission alone is authorized to restrain.

FEDERAL TRADE COMMISSION ACT—ORDERS UNDER—APPELLATE PRIVILEGES—JURISDICTION.

Under Federal Trade Commission Act, the jurisdiction of Circuit Court of Appeals to affirm, enforce, set aside, or modify any order of the Federal Trade Commission is exclusive.

ADMINISTRATIVE BODIES—STATUTORY PROCEEDINGS BY—IF JUDICIAL REVIEW PROVIDED.

The conduct of a statutory proceeding by an administrative agency of the government, where judicial review is provided for by the enabling statute, may not be enjoined by either a district court or a Circuit Court of Appeals.

¹ Reported in 50 F. Supp. 289. For case before Commission, see 34 F. T. C. 1396.

ADMINISTRATIVE BODIES—STATUTORY PROCEEDINGS BY—IF JUDICIAL REVIEW PROVIDED—EXHAUSTION OF ADMINISTRATIVE REMEDY—INJUNCTIVE RELIEF—PRE-REQUISITE OF OTHER.

The rule requiring exhaustion of the administrative remedy cannot be circumvented and an injunction obtained by asserting that the charge on which complaint rests is groundless and that the mere holding of prescribed administrative hearing will result in irreparable damage.

(The syllabus, with substituted captions, is taken from 50 F. Supp. 289)

On motion to dismiss, for lack of jurisdiction, complaint, or proceeding, by Morris Aron and Louis Broudo, trading as the Globe Printing Co., and another, against the Commission, Garland S. Ferguson, chairman, Charles H. March and others, members, Randolph Preston, trial examiner, and J. W. Brookfield, attorney, for a preliminary injunction restraining defendants from holding any hearing or otherwise proceeding with the prosecution of the Commission's complaint charging plaintiffs with engaging in unfair acts and practices in commerce in violation of section 5, motion granted.

Mr. Arthur S. Salus and *Mr. Nathan Lavine*, Philadelphia, Pa., for plaintiffs.

Mr. Gerald A. Gleeson, United States Attorney; *Mr. W. T. Kelley*, chief counsel, Federal Trade Commission; and *Mr. Cyrus B. Austin*, special attorney, Federal Trade Com[290]mission, for defendants.

KALODNER, District Judge:

The issue here is as to whether this court has jurisdiction to enjoin the holding of hearings and the taking of testimony in a proceeding before the Federal Trade Commission.

Briefly stated, the facts are as follows:

On or about August 10, 1942, the Federal Trade Commission instituted proceedings against the plaintiffs. The Commission's complaint charged the plaintiffs with engaging in unfair acts and practices in commerce in violation of section 5 of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A. sec. 45¹). Specifically, the Commission's complaint alleged that plaintiffs were engaged in the distribution and sale of push cards and punchboards in interstate commerce; that said push cards and punchboards are sold for the purpose of being used, and are used, by the ultimate purchasers thereof, in combination with other merchandise as a means of selling such other merchandise by means of lot or chance; that such sale and distribution of push cards and punchboards by plaintiffs supplies to, and places in the hands of, the purchasers a means of conducting

¹ Sec. 5 (a) of the act provides as follows: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

lotteries and games of chance, and of selling and distributing merchandise in interstate commerce packaged and assembled for sale by lot or chance, and is contrary to the public interest.

On September 22, 1942, the plaintiffs filed their answer to the complaint. Subsequently, on April 14, 1943, the Commission scheduled hearings in Philadelphia to commence April 26, 1943, and designated the defendant Preston to conduct such hearings as trial examiner.

On April 21, 1943, plaintiffs filed a complaint in this court praying, *inter alia*, that a preliminary injunction issue restraining the Commission and the individual defendants named in the complaint from holding any hearings or otherwise proceeding with the prosecution of the Commission's complaint.

The plaintiffs premise their action here on the contention that the Commission's complaint does not allege that the plaintiffs are engaged in competition with other punchboard manufacturers, and that the sale and distribution of the punchboards in interstate commerce does not, in itself, constitute an unfair act or practice in commerce, and that therefore the Commission is without jurisdiction in the premises.

The Commission filed a motion to dismiss the plaintiffs' complaint here, raising the issue as to this court's jurisdiction.

It is clear that the plaintiffs' motion for preliminary injunction must be denied, and that the Commission's motion to dismiss the plaintiffs' complaint must be granted.

This court is without jurisdiction to enjoin any proceedings before the Federal Trade Commission.

A proceeding before the Commission is a statutory proceeding, under the provisions of section 5 of the act. Jurisdiction to determine what constitutes unfair acts or practices in commerce, within the meaning of the act, is vested exclusively in the Commission—and this court may not substitute its jurisdiction for that of the Commission for the purpose of determining whether the acts and practices charged in the Commission's complaint constitute unfair acts or practices, which the Commission alone is authorized to restrain.

The Federal Trade Commission Act provides for full hearing to persons charged with its violation. The act further provides that any cease and desist order made by the Commission may be reviewed *by the United States Circuit Court of Appeals, and the jurisdiction of the Circuit Court of Appeals to affirm, enforce, set aside, or modify any order of the Commission is exclusive, under section 5 (d) of the act.*

Apart from the fact that the circuit courts alone are vested with exclusive jurisdiction to review orders of the Federal Trade Commis-

sion, it is well settled that the conduct of a statutory proceeding by an administrative agency of the Government, where judicial review is provided for by the enabling statute, may not be enjoined by either a district court or a circuit court of appeals.

As was stated in *Myers et al. v. Bethlehem Shipbuilding Corp.*, 303 U. S. [291], 41, 51-52:

Obviously, the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage. Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact.

In the Myers case, the National Labor Relations Board had filed a complaint against the Bethlehem Shipbuilding Corporation, charging it with unfair labor practices affecting commerce, and served notice of hearings thereon. The Shipbuilding Corporation filed a bill in equity in the District Court to enjoin the Board from holding hearings, alleging that the provisions of the National Labor Relations Act were not applicable to the Corporation's business because its operations were not carried on in, and did not affect, interstate commerce, and that accordingly such hearings would be futile and that they would result in irreparable damage to the Corporation. In reversing a decree for a preliminary injunction, with a direction to dismiss the bill, the Supreme Court said (pp. 50-51):

The Corporation contends that, since it denies that interstate or foreign commerce is involved and claims that a hearing would subject it to irreparable damage, rights guaranteed by the Federal Constitution will be denied unless it be held that the District Court has jurisdiction to enjoin the holding of a hearing by the Board. So to hold would, as the Government insists, in effect substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board exclusively should hear and determine in the first instance. *The contention is at war with the long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.* That rule has been repeatedly acted on in cases where, as here, the contention is made that the administrative body lacked power over the subject matter. [Emphasis supplied.]

The Supreme Court of the United States in *Federal Power Commission v. Metropolitan Edison Co. et al.*, 304 U. S. 375, reiterated its ruling in the Myers case, saying (p. 385):

So, attempts to enjoin administrative hearings because of a supposed or threatened injury, and thus obtain judicial relief before the prescribed administrative remedy has been exhausted, have been held to be at war with the long-settled rule of judicial administration. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41. See, also, *Securities & Exchange Comm'n v. Andrews*, 88 F. (2d) 441.

The necessity of exhaustion of administrative remedies prescribed by statute was pointed out by the *United States Supreme Court* in *Lockerty et al. v. Philips*, No. 934, October Term 1942 (decided May 10, 1943).

Said the court in that case (p. 3) :

Appellants are thus seeking the aid of the district court without pursuing the administrative remedy provided by the statute (cf. *Illinois Commerce Commission v. Thomson*, No. 178, decided April 12, 1943, p. 9), and without recourse to the judicial review by the Emergency Court of Appeals and by this court which the statute affords.

In ruling that the Emergency Court of Appeals had exclusive jurisdiction to review price enforcement orders (akin to the exclusive jurisdiction in Circuit Courts of Appeals to review orders of the Federal Trade Commission), the Supreme Court stated in the *Lockerty* decision (p. 4) :

In the light of the explicit language of the Constitution and our decisions, it is plain that Congress has power to provide that the equity jurisdiction to restrain enforcement of the Act, or of regulations promulgated under it, be restricted to the Emergency Court, and, upon review of its decisions, to this Court. Nor can we doubt the authority of Congress to require that a plaintiff seeking such equitable relief resort to the Emergency Court *only after pursuing the prescribed administrative procedure*. [Emphasis supplied.]

See, also, *Newport News Shipbuilding & Dry Dock Co. v. Schauffler et al.*, 303 U. S. 54; *Petroleum Exploration, Inc., v. Public Service Commission et al.*, 304 U. S. 209, 221.

In *Royal Baking Powder Co. v. Federal Trade Commission et al.*, 32 [292] F. (2d) 966 (cert. den. 280 U. S. 572), [12 F. T. C. 740] the Commission had ordered Royal to show cause why a previous order of the Commission dismissing the proceedings should not be vacated and the proceedings reopened for the taking of additional testimony. Royal then filed a complaint in the District Court, praying that the making of such an order be enjoined. The District Court dismissed the bill. The Court of Appeals of the District of Columbia, in affirming the decree of dismissal, said (p. 968) :

It is well settled that the right of review herein afforded by the Circuit Court of Appeals constitutes a "plain, speedy, and adequate remedy at law," and is a bar to the remedy by injunction.

In *Chamber of Commerce of Minneapolis et al. v. Federal Trade Commission et al.*, 280 Fed. 45, [4 F. T. C. 604] the United States Circuit Court of Appeals for the Eighth Circuit ruled that *neither the District Court nor the Circuit Court of Appeals is empowered to review or interfere with a Federal Trade Commission proceeding in its preliminary stages*, even though the jurisdiction of the Commission is challenged. Said the court in that case (p. 48) :

* * * It is our judgment that neither the District Court nor this court has power under the act to interfere with the investigation and inquiry of the Commission, involving the taking of testimony and the finding of facts essential to the making of such an order as shall ultimately be passed upon by the Circuit Court of Appeals for enforcement, affirmance, modification, or setting aside * * *

* * * To halt this investigation before testimony is taken would be an invasion of the powers of the legislative and executive branches of the government.

To the same effect was the decision in *T. C. Hurst & Son v. Federal Trade Commission et al.*, 268 Fed. 874 [3 F. T. C. 565]. Said the court in that case (p. 878):

* * * The jurisdiction of the Circuit Court of Appeals to enforce, set aside, or modify orders of the Commission, is exclusive. In all of the proceedings, whether before the Commission or the court, the amplest provision is made for notice to and full hearing of all parties interested, and for this court, for any of the reasons urged, to anticipate by injunction the action of the Commission, and the judgment of the court charged under the law with the review thereof, would be clearly an usurpation of authority.

In view of the above, I am of the opinion that this Court is without jurisdiction in the proceedings here filed by the plaintiffs, and that the Commission's motion to dismiss the instant complaint must be granted.

An order may be submitted in accordance with this opinion.

WOLF v. FEDERAL TRADE COMMISSION¹

No. 7931—F. T. C. Docket 3634

(Circuit Court of Appeals, Seventh Circuit. May 19, 1943)

METHODS, ACTS, AND PRACTICES—LOTTERY MERCHANDISING—PULL CARD SCHEMES—NOTICE PURCHASE NOT REQUIRED—WHETHER SUBTERFUGE MERELY.

In proceeding by Federal Trade Commission against person selling merchandise by alleged lottery method whereby prospective purchasers detach tabs on "pull card" to ascertain particular articles they were to purchase and price to be paid, evidence that distributors often failed to call purchasers' attention to notice in small print making it unnecessary to buy articles and that scheme contemplated that all of listed merchandise should be sold established that notice, relied on as proof that there was no lottery, was a mere subterfuge. Federal Trade Commission Act, sec. 1 et seq., 15 U. S. C. A., sec. 41 et seq.

METHODS, ACTS, AND PRACTICES—LOTTERY MERCHANDISING—PULL CARD SCHEMES—DETERMINATION BY CHANCE OF ITEM AND PRICE—IF ARTICLE OF VALUE RECEIVED BY ALL, AND NOTICE PURCHASE NOT REQUIRED.

A scheme for selling merchandise whereby prospective purchasers detached tabs on "pull card" to ascertain particular items they were to

¹ Reported in 135 F. (2d) 564. For case before Commission, see 34 F. T. C. 290.

purchase and price to be paid involved a "game of chance," "gift enterprise" or "lottery," notwithstanding that each purchaser was entitled to receive an article of value and that purchasers, if dissatisfied with article drawn, were not required to complete purchase.

METHODS, ACTS, AND PRACTICES—LOTTERY MERCHANDISING—IF CRIMINAL STATUTE NOT CONTRAVENED.

A sales plan involving the element of chance is contrary to public interest, regardless of whether or not it contravenes any criminal statute.

METHODS, ACTS, AND PRACTICES—COMMISSION JURISDICTION.

The jurisdiction of Federal Trade Commission covers not only acts and practices involving fraud and deception, but also unfair methods of competition or unfair or deceptive acts or practices in commerce if a proceeding with respect thereto would be in the interest of the public.

METHODS, ACTS, AND PRACTICES—LOTTERY MERCHANDISING—AS UNFAIR ACT OR PRACTICE.

The use of a game of chance for the distribution of merchandise is an "unfair act or practice" in commerce within prohibition of the Federal Trade Commission Act.

METHODS, ACTS, AND PRACTICES—COMMISSION JURISDICTION—PREREQUISITES—INJURY TO COMPETITION AND PUBLIC INTEREST.

Proof of injury to competition is not required to bring act within prohibition of Federal Trade Commission Act, but showing of an act or practice in commerce inimical to the public interest is sufficient.

METHODS, ACTS, AND PRACTICES—COMMISSION JURISDICTION—"PULL CARD" SCHEMES—WHERE ARTICLE SECURED AND PRICE PAID, DETERMINED BY CHANCE.

A lottery for sale of merchandise whereby prospective purchasers detached tabs on "pull card" to ascertain particular article they were to purchase and price to be paid was within prohibition of the Federal Trade Commission Act as a practice contrary to the "public interest."

EVIDENCE—METHODS, ACTS, AND PRACTICES—LOTTERY MERCHANDISING—CUSTOMER SATISFACTION.

In proceeding by Federal Trade Commission against person selling merchandise by means of lottery methods, letters offered to prove satisfaction of such person's customers were inadmissible.

PLEADING AND PRACTICE—PLEADING—PARTIES—IF SALE OF BUSINESS BY THREE RESPONDENTS, BEFORE HEARING, TO FOURTH, AND NEW PARTY—WHETHER INDISPENSABLE AND ORDER AGAINST ORIGINAL FOUR, VOID FOR MISNOMER.

Where proceeding by Federal Trade Commission charging use of lottery methods in selling merchandise was against four persons, but prior hearing three of them sold their interest to the fourth and another individual, such individual was not an "indispensable party," and order directed to four persons originally named was not void for misnomer of parties in absence of objection prior to petition for [565] review.

PLEADING AND PRACTICE—PLEADING—PARTIES—NONJOINDER—WHERE OBJECTION NOT SEASONABLY RAISED, AND PARTIES NOT INDISPENSABLE.

Objection to nonjoinder of parties is considered waived unless it is timely raised, and nonjoinder of parties who are not indispensable in no way affects jurisdiction.

CEASE AND DESIST ORDER—INDEFINITENESS—LOTTERY MERCHANDISING.

An order of Federal Trade Commission directing named individual to cease and desist from using lottery methods and devices in interstate sales of merchandise was not invalid for indefiniteness.

(The syllabus, with substituted captions, is taken from 135 F. (2d) 564)

On petition for review of order of Commission, order affirmed.

Mr. Arthur D. Herrick, of New York City, for petitioner.

Mr. J. J. Smith, Jr., assistant chief counsel, *Mr. W. T. Kelley*, chief counsel, and *Mr. Donovan R. Divet*, special attorney, for Federal Trade Commission, all of Washington, D. C., for respondent.

Before SPARKS and KERNER, *Circuit Judges*, and LINDLEY, *District Judge*.

SPARKS, *Circuit Judge*.

Petitioner seeks review of an order of the Federal Trade Commission directing him to cease and desist from using lottery methods and devices in the interstate sale of merchandise. Certain other practices were involved in the order, but petitioner states that these have been discontinued and he does not question the order as to them. He states that the sole issue presented by his petition for review is whether his method of conducting business constitutes the use of lottery methods and devices. The original complaint was directed to a group of four persons, including petitioner Wolf, doing business as DeLuxe Products Co. and Delco Novelty Co. Before hearing, three of the respondents had sold their interests to Wolf and one Schwartz, who was not a party to the proceeding, hence we refer throughout our opinion to only the one party, Wolf, as petitioner.

The Commission in its findings of facts describes the offending mode of distribution as follows: Petitioner obtained distributors for his merchandise through answers to magazine advertisements offering to send three initialed handkerchiefs for 6 cents, or a four-piece beautifying kit for 10 cents, to pay postage. To the persons who answered these advertisements, he then sent catalogs and circulars describing the articles of merchandise sold by him, and the method to be used in their sale. The catalogs contained pictures and descriptions of various pieces of merchandise offered as premiums, rewards, or compensation to the distributor for his services in selling 20 articles of merchandise, some of which were also illustrated in the catalog. This catalog also contained a list of the 20 articles to be offered for sale, with the price of each article, and a blank space opposite each article for inserting the name of the purchaser. At the right of this list was pasted a device commonly known as a "pull card," containing 20 tabs, on the

under side of each of which was concealed the name of one of the 20 articles for sale, and the price thereof, neither of which was revealed until after the tab was separated from the card. Exhibits show that these tabs carried girls' names, and the caption above them directed the purchaser to "Pick your favorite four-leaf-clover girl."

The mode of procedure was for the purchaser to detach one of the tabs, thereby ascertaining the article he was to purchase, and the price he was to pay for it. In one assortment, the prices varied from 7 cents for a chromium-plated tray to 35 cents for a box of face powder. When the purchaser had paid the amount called for by his tab, his name was written in the blank provided. When the distributor had sold all the articles and collected the price therefor, he remitted the amount to the petitioner, receiving from [566] him the merchandise which he was to deliver to the purchasers, along with the article chosen by himself as his premium or reward for his services. He might, instead of selecting a merchandise premium, elect to take his compensation in cash, and if so, retain 35 percent of the amount of his sales.

Immediately above the pull tab device the following appeared, in small print, as found by the Commission:

NOTICE TO PURCHASERS: On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article, pay the holder of this book the price shown on the slip. If you do not want the article you need not buy it.

The Commission found that distributors sometimes called attention of their prospective customers to this "notice" and at other times did not. The Commission further found that the successful operation of the sales plan was dependent upon the ability of the distributor to sell all the 20 articles listed, so as to provide for remittance of the required amount to petitioner in order to obtain the merchandise purchased. "The operation of the plan or method strictly in accordance with the 'notice' would not net the distributor a return sufficient to warrant completion of the plan or method and would thereby render it inoperative. No instructions are contained in any of the catalogs, circulars, or other literature distributed by the respondents as to what should be done in the event all the articles are not sold, or if a person pulling a tab fails or refuses to complete the purchase; or is any provision made as to the compensation to be received by the distributor in such cases. On the contrary, as shown by all of the respondents' literature, it is contemplated that all of the listed merchandise must be sold."

The Commission concluded that the "notice" was a subterfuge, intended to avoid the consequences incident to the operation of a game

of chance, gift enterprise, or lottery scheme. It also found that some of the merchandise had greater value and ordinarily sold at higher retail prices than the prices listed, thereby inducing purchasers to pull the tabs in the hope that they would receive articles of greater value than the prices designated to be paid for them. Whether a purchaser received 1 of these, or which of the 20 he might receive and the price he was to pay were determined wholly by lot or chance. The Commission therefore found that petitioner had placed in the hands of others, devices to be used in the sale and distribution of their merchandise by means of which a game of chance, gift enterprise or lottery scheme might be used, and by the use of such devices, the merchandise was sold and distributed to the ultimate consumer wholly by lot or chance, contrary to the established public policy of the United States. It further found that many persons selling and distributing merchandise in competition with petitioner were unwilling to adopt and use the sales plan used by petitioner or any method involving a game of chance, gift enterprise, or lottery, or any method contrary to public policy. Hence it concluded that petitioner's acts and practices were all to the prejudice and injury of the public and petitioner's competitors, and contrary to the established public policy of the United States, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Petitioner earnestly contends that his method of conducting business does not involve a lottery, urging that the three essential elements of lottery, namely, consideration, chance, and prize, are not present. He, of course, urges that his notice to purchasers that they need not buy the article specified in the slip removes all element of consideration and chance, since the purchaser is entitled to reject his purchase after he ascertains what it is and the amount to be paid. However, we are convinced that there was ample evidence to support the finding of the Commission that this notice was a mere subterfuge. Of course the purchaser would not be *bound* to buy the article covered by the tab he pulled. This is no more than a recognition of the common law rule that a gambling transaction is unenforceable, and "only the loser has recourse to the courts." *Minter v. Federal Trade Commission*, 102 F. (2d) 69 [28 F. T. C. 1885]. And we think there can be no serious doubt that a method of distribution which contemplates the offering to the purchaser of an opportunity to pull a chance to see which article of a list of 20 he may buy constitutes a game of chance, even though each purchaser does receive an article of value for his [567] purchase. *Keller v. Federal Trade Commission*, 132 F. (2d) 59 [35 F. T. C. 970].

Petitioner complains of the effort of the Commission to find a prize in his method of distribution in the variation in values represented by the different articles offered for sale under the scheme. We think we might go even further and find an element of prize in whether or not the purchaser drew a chance to buy an article that would be of any value to himself. To illustrate, a person needing razor blades might well consider himself a prize winner if he drew a chance to buy a package of them instead of a bottle of perfume which might be a total loss to him. And even though petitioner does point to his notice to show that the purchaser would have no obligation to buy the bottle of perfume, we find evidence to support the finding of the Commission that that notice was a subterfuge, hence cannot aid petitioner. Although there was evidence of some sales which might be called "straight sales," on a straight 35 percent cash commission basis, we think the record supports the finding of the Commission that the method of sale or distribution involved a game of chance, gift enterprise, or lottery scheme.

Petitioner asserts that there is no showing that the proceeding is in the public interest and denies that it is contrary to the public policy or criminal statutes. We agree with the Commission that a sales plan involving the element of chance is contrary to the public interest, regardless of whether or not it contravenes any criminal statutes. Certain cases relied upon by petitioner to establish absence of a lottery scheme under criminal statutes are not applicable to this proceeding. It is true that there was no finding that there was fraud or deception practiced here (apart from certain practices heretofore referred to as to the order relating to which petitioner makes no complaint). The statute does not confine jurisdiction of the Commission to those acts and practices involving fraud and deception, but empowers it to proceed whenever it has reason to believe that any person has been or is using an unfair method of competition or unfair or deceptive act or practice in commerce, provided that it appear to it that a proceeding by it in respect thereto would be in the interest of the public.

We are convinced that the use of a game of chance for the distribution of merchandise is an unfair act or practice in commerce. *Keller v. Federal Trade Commission, supra*. Petitioner complains that there was no proof of injury to competition within the contemplation of the act, citing *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291 [13 F. T. C. 593], and *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 648 [15 F. T. C. 598]. However, since those cases were decided, the act has been amended (in 1938) to broaden the scope of the jurisdiction of the Commission to enable it to proceed against any person using an unfair or deceptive act or practice in commerce as

well as an unfair method of competition, provided it appears to the Commission that such proceeding would be in the public interest (15 U. S. C. A. sec. 45). Hence it is no longer necessary to show competition, if there is an act or practice in commerce, inimical to the public interest. *Scientific Mfg. Co. v. Federal Trade Commission*, 124 F. (2d) 640 [34 F. T. C. 1793]; *Pep Boys v. Federal Trade Commission*, 122 F. (2d) 158 [33 F. T. C. 1807]. See also *Federal Trade Commission v. Raladam Co.*, 316 U. S. 149 [34 F. T. C. 1843]. We think the practice here employed is contrary to the public interest, and that a proceeding to prevent its further use is in the public interest.

Although petitioner stated in his brief that the sole issue presented for review was whether his method of conducting business constituted the use of lottery methods and devices, he also raised three further questions, contending that the Commission erred in failing to receive in evidence certain letters and cards offered by petitioner; that the order was invalid and unenforcible for indefiniteness and remoteness; and that the order was void for misnomer of parties. As to the refusal to admit in evidence letters, offered to prove the satisfaction of petitioner's customers, we find no error in the action of the examiner in sustaining the objection of the Commission to their introduction.

The contention as to "misnomer of parties" relates to the fact that prior to hearing on the complaint, three respondents had sold their interest in the partnership to petitioner and one Schwartz, as shown by petitioner very early in the hearing. The Commission admits overlooking this fact but contends that petitioner's failure to raise the question until his petition for review prevents him from relying [568] upon it at this time. The order was directed to the four respondents originally named, as individuals, doing business as the DeLuxe Co., or the Delco Co., and their respective agents, representatives and employees. We think it cannot be contended that Schwartz was an indispensable party. Objection to nonjoinder of parties is considered waived unless it is timely raised, and the nonjoinder of parties who are not indispensable in no way affects jurisdiction. *Metcalf v. Williams*, 104 U. S. 93; 39 Am. Jur. on Parties, secs. 5, 25, 35, 110 and 114; Annotation 1 A. L. R. 363.

We find no merit in petitioner's contention that the order is invalid for indefiniteness.

The order of the Commission is affirmed, and petitioner is hereby ordered to comply with it.

SEBRONE CO., ET AL. v. FEDERAL TRADE COMMISSION¹

No. 8056—F. T. C. Docket 4230

(Circuit Court of Appeals, Seventh Circuit. May 26, 1943)

CEASE AND DESIST ORDERS—PARTIES—CORPORATIONS AND THEIR OFFICERS AND DIRECTORS—WHERE CORPORATE POSITIONS ADMITTED, AND ALLEGATIONS DENIED.

Where complaint charged two corporations and their named officers and directors with dissemination of false advertisements, and all individuals admitted that they occupied various positions ascribed to them by complaint and denied falsity of statements used, Federal Trade Commission did not err in directing its cease and desist order against corporations and the named individuals without requiring specific proof of participation by each individual in the acts charged.

CEASE AND DESIST ORDERS—PARTIES—CORPORATIONS AND THEIR OFFICERS AND DIRECTORS—REPRESENTATIVES, AGENTS AND EMPLOYEES.

Order of Federal Trade Commission directing that two corporations and their named officers and directors cease and desist from disseminating false advertisements was properly made to run not only against corporations and officers and directors named in complaint, but also to their representatives, agents and employees. 28 U. S. C. A. sec. 383.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—WORDS AND PHRASES, ETC.—IF LITERALLY AND TECHNICALLY TRUE.

[677] Words and sentences may be literally and technically true and yet be framed in such a setting as to mislead or deceive, so as to authorize cease and desist order of Federal Trade Commission directed against use of such words and sentences in advertising.

FINDINGS OF COMMISSION—IF SUPPORTED BY EVIDENCE—AS BINDING ON COURT.

Findings of fact of Federal Trade Commission, if supported by the evidence, are binding upon Circuit Court of Appeals. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—DEODORANTS.

Evidence sustained Federal Trade Commission's findings that statements, in petitioners' advertising respecting its product for use as a deodorant, which represented that preparation would destroy odors and that it would reduce excessive sweating to normal, were deceptive and misleading to public and justified Commission's order directing petitioners to cease making such representations concerning their product.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—DANDRUFF REMEDY.

Evidence sustained Federal Trade Commission's findings that statements, in petitioners' advertising respecting its product for use in cases of dandruff, which used term remedy, and from which it could be inferred that preparation afforded permanent rather than temporary relief, were deceptive and misleading to public and justified Commission's order directing petitioners to cease making such representations concerning their product.

¹ Reported in 135 F. (2d) 676. For case before Commission, see 34 F. T. C. 1126.

(The syllabus, with substituted captions, is taken from 135 F. (2d) 676)

On petition for review of order of Commission, order affirmed and petitioners ordered to comply with it.

Mr. G. W. Horsley, of Springfield, for petitioner.

Mr. Joseph J. Smith, Jr., assistant chief counsel, *Mr. W. T. Kelley*, chief counsel, and *Mr. Karl E. Steinhauer*, special attorney, for Federal Trade Commission, all of Washington, D. C., for respondent.

Before EVANS and SPARKS, *Circuit Judges*, and LINDLEY, *District Judge*.

SPARKS, *Circuit Judge*.

Two corporate, and five individual petitioners seek review of an order of the Federal Trade Commission that they cease and desist from disseminating false advertisements. These advertisements related to two products manufactured by the Sebrone Co., and distributed by it in Cook County, and by the Federal Cosmetic Sales Corporation elsewhere throughout the United States, under exclusive license from the Sebrone Co. The products were "Waft," a deodorant, and "Sebrone," for use in cases of dandruff.

The order was directed to advertisements representing that petitioners' preparations were new discoveries or recent developments of scientific research; that Sebrone was a cure or remedy for dandruff or that it had any therapeutic value in the treatment thereof in excess of assisting in the temporary removal of dandruff scales and beneficially affecting superficial infections of the scalp sometimes associated with the conditions of dandruff; that Sebrone would have any beneficial effect upon scars or scar tissue, or that it would remove scar tissue; through the use of the words "stops dandruff," "ends dandruff," "defeats dandruff," or similar ones, that their preparation Sebrone would permanently eliminate dandruff or constitute a remedy or cure for the underlying conditions which might cause it; that Sebrone had any therapeutic value in the treatment of any disease or condition causing baldness or that its use would prevent baldness; that Waft would destroy or have any effect upon unpleasant body or foot odors other than the temporary masking of such odors; that Waft would have any therapeutic value in the treatment of any disease or condition causing excessive sweating, or that it would reduce excessive sweating to normal or have any effect upon the condition of sweating other than the temporary effect afforded by the use of an astringent.

Petitioners' first objection to the order is directed to the inclusion therein of three individuals, Virginia Cook, Ethel Cronson, and Evelyn Schon, as to whom, they con [678] tend, there was absolutely no proof introduced. They urge that the mere fact that these three

petitioners were officers and directors in the corporation does not raise a presumption that they have been guilty of any misdoing of the corporation until it is affirmatively shown by testimony that they participated in and helped perpetrate the alleged act.

The record shows that Miss Cook was secretary-treasurer and a director of the Cosmetic Sales Co.; Mrs. Schon, secretary and treasurer of the Sebrone Co., and a director thereof; and Mrs. Cronson, a director of the Sebrone Co. One answer was filed in the name of all seven petitioners, thereby setting up identical defenses for all, with no attempt to differentiate between the responsibility of the various petitioners for the acts complained of. The record further shows that on hearing, counsel for petitioners sought leave to amend the answer to show that Miss Cook was no longer an officer of the Cosmetic Co., and that Mrs. Cronson was no longer an officer of the Sebrone Co. These changes of status were both stated to have taken place subsequent to the filing of the complaint and the answer. The record is silent as to the disposition of the request for leave to amend the answer.

The situation then is that the complaint charged the two corporations and their named officers and directors with the dissemination of false advertisements, setting out certain specific representations with respect to each product, which were alleged to be false; by joint answer all petitioners denied the commission of any offense; there was no denial of the use of the particular representations charged to be false; all denied the falsity of the statements used; there was no denial of responsibility for acts charged unless we consider one paragraph of answer by which *all* the individual petitioners denied dominating and controlling the advertising policies and business activities of the corporate petitioners as such a showing; all admitted by answer that the various individual petitioners occupied the respective positions ascribed to them by the complaint, and this was further supported by evidence; all admitted that they had been engaged in the sale and distribution of the cosmetic and medicinal preparations involved, and that such products had been sold and transported in interstate commerce; all denied "that the aforesaid representations and claims used and disseminated by them as hereinabove described are grossly exaggerated, misleading, and untrue." In view of all these facts, we find no error on the part of the Commission in directing its order against all the petitioners without requiring specific proof of participation by each in the acts charged. Cf. *Federal Trade Comm. v. Education Society*, 302 U. S. 112 [25 F. T. C. 1715].

Petitioners also complain that the order runs not only to the persons named therein, but also to their representatives, agents, and employees. The Supreme Court has approved this form in the case of orders issued by the National Labor Relations Board. *Southport Petroleum Co. v.*

Labor Board, 315 U. S. 100. See also *Warner and Co. v. Eli Lilly and Co.*, 265 U. S. 526. The statute relating to the issuance of injunctions provides that they shall be binding upon the parties to the suit, "their officers, agents, servants, employees, and attorneys * * *" 28 U. S. C. A. sec. 383. We find no error in their inclusion here.

As to the contents of the order, petitioners contend that the evidence does not support the Commission's findings that their advertising is false and misleading. The Commission listed some of the offending representations as follows:

Sebrone is the modern, scientific way to stop dandruff.

Stop dandruff in one week with Sebrone.

Sebrone—new treatment puts an end to dandruff.

Sebrone is a scientific preparation designed to end dandruff. It is made to do this job as simply and quickly as possible. The antiseptic properties of Sebrone actually destroy the dandruff germ.

With dandruff gone, scar tissue goes, infection halts.

Defeat dandruff with amazing new Sebrone.

Waft reduces excessive sweating to normal.

Kills strongest odors.

Body and foot odors vanish. * * * this new scientific, antiseptic deodorant stops odors immediately. * * * Waft is so powerful that it removes odors not only from the feet, but from shoes and [679] stockings as well. * * * Even the powerful odors of onions and garlic vanish when Waft is applied.

The formulae used in the preparation of both products were stated. The Commission found that the ingredients used in making Sebrone were not new but had been used in various combinations by physicians for many years, hence the preparation was not a new scientific discovery. As to Waft, composed of formaldehyde, menthol, alcohol, and water, the Commission found that because of the use of the formaldehyde, it had value as an antiseptic, but that that ingredient had long been used by the medical profession in varying percentages as an antiseptic and as a deodorant, hence it was not a new scientific discovery. It further found that, when used as a deodorant, the preparation would not destroy odors but its effect was limited to the masking of such odors as might be present, and further, that it would have but slight effect upon the condition of excessive sweating and would not reduce it to normal, there being nothing in the preparation which would have any effect upon the various causes of that condition, and its value being limited to the slight effect produced by its astringent qualities.

We find ample evidence of record to support the finding that petitioners' advertising was false and misleading. Although petitioners now contend that no one could have been misled by it into thinking that the preparations were intended to afford anything more than temporary relief, we agree with the Commission that "it is strange indeed to find petitioners contending that the public knew

'continued treatment was necessary,' when petitioners represented that: 'Most users of Sebrone report their dandruff gone in one week or less! The treatment is * * * quick * * * Stop DANDRUFF in one week with SEBRONE.' We think the clear inference to be drawn from this language is that the preparation affords permanent rather than temporary relief. Since this is not the case, by petitioners' own admission, the Commission rightly forbade the further use of such language. The same is true with respect to the inhibition of the use of the term "remedy" with respect to the preparation Sebrone. Petitioners contend that the term imports only a temporary relief, hence that they are justified in describing the product as a remedy for dandruff, pointing to a definition given by Webster: "That which relieves or cures a disease; any healing medicine or application." We were confronted by a similar contention in *D. D. D. Corp. v. Federal Trade Commission*, 125 F. (2d) 679 [34 F. T. C. 1821], which we answered by saying that careful scrutiny might justify the construction urged, but that the public to whom the representations were made were not as a whole experts in grammatical construction, and that the representations there involved were calculated to deceive a substantial portion of the public. See also *Bockenstette v. Federal Trade Commission*, 134 F. (2d) 369, 371, where the Court of Appeals for the Tenth Circuit said, "Words and sentences may be literally and technically true and yet be framed in such a setting as to mislead or deceive."

Having in mind the statutory mandate that the findings of the Commission as to the facts, if supported by evidence, shall be conclusive (15 U. S. C. A. sec. 45), we have no hesitation in affirming the order in all respects. We find ample evidence of record to support the findings of the Commission that the representations were deceptive and misleading, and that they had a tendency to induce a substantial portion of the public to purchase the preparations thus falsely described.

The order of the Commission is affirmed, and petitioners are hereby ordered to comply with it.

THE WIRE ROPE AND STRAND MANUFACTURERS ASSOCIATION, INC. v. FEDERAL TRADE COMMISSION¹

No. 5063—F. T. C. Docket 4443

(Circuit Court of Appeals, Fourth Circuit. May 29, 1943)

Ordered on joint motion of petitioner and Commission that former's petition to review order of Commission in *The Wire Rope and Strand Manufacturers Ass'n, Inc., et al.*, Docket 4443, December 8, 1942, 35 F. T. C. 756, requiring

¹ Not reported in Federal Reporter. For case before Commission, see 35 F. T. C. 756.

said association, respondent therein, and respondent member corporations, and their respective officers, etc., in connection with offer, etc., in commerce, of nonpatented wire rope, to cease and desist from entering into, etc., or carrying out any common course of action, etc., to fix, determine, maintain, or adhere to prices, terms, etc., of said product, etc., as in order set forth, be dismissed, motion setting forth that on May 21, 1943, Commission issued modified cease and desist order in which complaint, upon which December 8 order herein involved was based, was dismissed as to instant petitioner.²

Mr. George P. Lamb, of Washington, D. C., for petitioner.

Mr. J. J. Smith, Jr., assistant chief counsel, Federal Trade Commission, of Washington, D. C., for Commission.

ORDER DISMISSING PETITION TO REVIEW

On joint motion of petitioner and respondent, it is ordered that the petitioner's petition to review filed herein on February 5, 1943, be, and the same hereby is, dismissed.

This 29th day of May 1943.

[S] JOHN J. PARKER,
United States Circuit Judge.

Petitioner and respondent, by their undersigned attorneys, agree to the entry of the above and foregoing order dismissing petitioner's petition to review.

This 27th day of May 1943.

THE WIRE ROPE AND STRAND MANUFACTURERS
ASSOCIATION, INC.,

By [S] GEORGE P. LAMB,
George P. Lamb,

Attorney for said Petitioner.

FEDERAL TRADE COMMISSION,

By [S] JOSEPH J. SMITH, Jr.,
Joseph J. Smith, Jr.,

Attorney for said Respondent.

[Endorsed: "Filed and entered, May 31, 1943. Claude M. Dean, clerk, U. S. Circuit Court of Appeals, Fourth Circuit."]

A true copy.

Teste:

[S] CLAUDE M. DEAN,
*Clerk, U. S. Circuit Court, of Appeals,
Fourth Circuit.*

² Amended joint and several petitions of the American Chain and Cable Co., Inc. et al., respondents in the proceeding involved, to review said modified order (see ante at p. 790), was filed on July 30, 1943.

MILES LABORATORIES, INC. v. FEDERAL TRADE COMMISSION¹

No. 18057—F. T. C. Docket 4993

(District Court of the United States for the District of Columbia.
June 21, 1943)

METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—DISSEMINATING—IN GENERAL.

The dissemination of a false advertisement by corporation otherwise than on the labels carried by its products is an "unfair or deceptive act or practice" which is declared unlawful and which the Federal Trade Commission is empowered and directed to prevent. Federal Trade Commission Act, sec. 5, as amended, and secs. 12-15 added, 15 U. S. C. A., sec. 45 (a), 52-55.

FEDERAL TRADE COMMISSION ACT—SEC. 5—PROCEEDINGS UNDER—INITIATION AND CONDUCT OF—AS IN COMMISSION EXCLUSIVELY.

A proceeding by Federal Trade Commission in respect of unfair method of competition or unfair or deceptive act or practice in commerce is a special statutory proceeding which may only be brought by and before the Commission.

STATUTES AND STATUTORY CONSTRUCTION—DECLARATORY JUDGMENT ACT—AS SOURCE OF FEDERAL JURISDICTION—EFFECT ON PRE-EXISTING.

The Declaratory Judgment Act is not in itself a source of Federal jurisdiction and does not enlarge the pre-existing jurisdiction of the Federal courts. Jud. Code sec. 274d, as amended, 28 U. S. C. A., sec. 400.

FEDERAL TRADE COMMISSION ACT—SEC. 5—PROCEEDINGS UNDER—INITIATION AND CONDUCT OF—"WHENEVER THE COMMISSION SHALL HAVE REASON TO BELIEVE" USE OF UNFAIR METHOD, ETC.—DETERMINATION OF BY—EFFECT—AS JUDGMENT BASED ON DISCRETION.

Action of the Federal Trade Commission in determining that it has reason to believe that corporation has been or is using unfair methods of competition or unfair or deceptive acts or practices in commerce as a "judgment" based upon an exercise of "discretion" and is the first or preliminary step in assuming jurisdiction, and is not subject to review.

ADMINISTRATIVE BODIES—PROCEEDINGS BY—PROCEDURAL PRELIMINARIES AND INTERLOCUTORY ORDERS OR RULINGS—JUDICIAL REVIEW BY INJUNCTION OR DECLARATORY JUDGMENT.

To permit judicial review either by injunction or declaratory judgment of every procedural preliminary and interlocutory order or ruling by which a person may consider himself aggrieved would afford opportunity for constant delays in the course of administrative proceedings and would render orderly administrative procedure impossible and monopolize time and energies of the courts.

¹ Reported in 50 F. Supp. 434.

FEDERAL TRADE COMMISSION ACT—SEC. 5—PROCEEDINGS UNDER—INITIATION AND CONDUCT OF—REVIEW—JURISDICTION.

Where the Federal Trade Commission erroneously assumes jurisdiction and issues an order to cease and desist, such order and proceedings upon which it is based are subject to review by and only by a Circuit Court of Appeals of the United States.

[435] FEDERAL TRADE COMMISSION ACT—SEC. 5—PROCEEDINGS UNDER—INCONVENIENCE AND EXPENSE OF—WHETHER GROUND FOR REVIEW BY DECLARATORY JUDGMENT OF PRELIMINARY ORDER IN.

Inconvenience and expense of trial of complaint before Federal Trade Commission is part of the social burden of living under Government and constitutes no reason for review by means of an action for declaratory judgment of preliminary order by Federal Trade Commission.

(The syllabus, with substituted captions, is taken from 50 F. Supp. 434)

Action by Miles Laboratories, Inc., against Commission and others for a declaratory judgment that defendants have no authority to determine the legality of the language used on the labeling of plaintiff's products, that defendants have no authority to force plaintiffs to vary such language, that defendants exceeded their authority in seeking to compel plaintiff to include in its advertising the warning demanded by defendants, that defendants have no authority to require plaintiff to include in its advertising warnings concerning consequences which might result in the use of its products contrary to the directions on the labels, and that plaintiff has fully complied with all legal requirements imposed by the Commission upon the advertising of its products.

On defendants' motion to dismiss complaint, motion sustained, and complaint dismissed.

Mr. James F. Hoge, of New York City, *Mr. Preston B. Kavanagh* and *Mr. P. C. King, Jr.*, both of Washington, D. C. (*Mr. Verne G. Cawley* of Elkhart, Ind., and *Mr. Edwin Borchard* of New Haven, Conn., of counsel), for plaintiff.

Mr. Edward M. Curran, United States Attorney, *Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Richard P. Whiteley*, assistant chief counsel, Federal Trade Commission, and *Mr. Cyrus B. Austin*, all of Washington, D. C., for defendant.

LEHRING, Justice:

The plaintiff, an Indiana corporation, is now, and for more than 25 years last past has been, engaged in the manufacture, sale, and distribution in interstate commerce of certain medicinal preparations known as "Dr. Miles' Nervine," "Dr. Miles' Nervine Tablets," and

"Dr. Miles' Anti-Pain Pills" with annual sales in excess of \$900,000, and a goodwill of more than \$1,000,000.

Its product is packaged and sold in bottles, tins, and cartons, which bear labels containing statements and representations with respect to the conditions of use recommended for the same, the active ingredients, the purposes for which the products are effective and the safe or proper dosage. Specimens of cartons, labels, and package inserts, which constitute the complete packaging of said products, are filed with the complaint as exhibits A-1 to A-3, inclusive. It is alleged that in this respect the plaintiff complies with all the provisions of the Federal Food, Drug and Cosmetic Act (21 U. S. C. A. sec. 301 et seq.)

Insofar as the plaintiff advertises these products, their advertisements include one of the following statements: "Full Directions on Package—Read Them" or "Read Full Directions on Bottle."

The defendant, Federal Trade Commission, composed of the individual defendants, acting through its chief trial examiner, notified the plaintiff that its packages, labels, and labeling failed adequately to reveal the potential danger of its products, and submitted a stipulation for the signature of the plaintiff wherein it would admit (a) that excessive use of "Dr. Miles' Nervine" and "Dr. Miles' Nervine Tablets" may result in mental derangement of the user and (b) that excessive use of "Dr. Miles' Anti-Pain Pills" may cause collapse or dependence upon said product and (c) that neither the "caution" appearing on its labels nor the advertisements disseminated by it include warnings to that effect.

The proposed stipulation contains an agreement that the plaintiff will forthwith cease and desist from "disseminating any advertisement pertaining to the preparations Dr. Miles' Nervine and/or Dr. Miles' Nervine Tablets * * * which fails clearly to reveal that said preparation or preparations should not be used in excess of the dosage recommended; that such excessive use may be dangerous, causing mental derangement and/or skin eruptions, and should not be taken by or administered to children"; and, with respect to Dr. Miles' Anti-Pain Pills, from disseminating any advertisement "which fails clearly to reveal that said preparation should not be used in excess of the dosage recommended; that such excessive use may be dangerous, causing collapse and/or dependence upon the drug, and that it should not be taken by or [436] administered to children." However, the proposed stipulation gives plaintiff the option to include such cautions or warnings on its labels and, in such case, the advertisements need contain only the cautionary statement: "CAUTION, use only as directed."

The defendants threaten, in event of refusal or failure on the part of the plaintiff to execute the stipulation, to institute proceedings immediately against said plaintiff.

The proposed stipulation entitled "Stipulation as to the Facts and Agreement to Cease and Desist" is attached to the complaint and made part thereof and is marked "Exhibit B."

The complaint characterizes the claims, demands, and threatened action of the Commission as "illegal, unlawful, arbitrary, and in excess of the powers and authority" vested in it (par. 24), and points out, in paragraph 25, that if plaintiff were to sign the stipulation, its good will would be destroyed and it would be required at great expense to discontinue use of all labels, tins, cartons, and advertising matter now on hand, and to obtain and recall from wholesalers, jobbers, and dealers all of said products in their possession and attach new labeling thereto at an expense to it in excess of Twenty-five Thousand Dollars (\$25,000).

The complaint alleges (par. 26) that if plaintiff refuses to sign the stipulation, it would be (a) subject to criminal prosecution; (b) required at great expense in money and time to defend; (c) receive adverse and harmful publicity; (d) required at great expenditures of money and time to try issues of fact which defendants are without legal authority to raise and have no jurisdiction to determine, and will suffer undue interference with its business and without means of a judicial determination of defendants' jurisdiction and authority, except at the conclusion of a long drawn-out and expensive proceeding before defendant and (e) if found guilty, be unable to obtain a judicial review if there is any evidence to support the charges, no matter how overwhelming the evidence it introduces to disprove the charges may be.

The plaintiff refused to sign the proposed stipulation on the ground that the actions of the defendants are illegal; and that the action of the Commission and its individual members is beyond the scope of statutory authority; and beyond the power conferred by statute upon the respective offices.

The relief sought is a declaratory judgment pursuant to section 274 (d) of the Judicial Code, as amended (28 U. S. C. A. sec. 400) that (a) defendants have no authority to determine the legality of the language used on the labeling of plaintiff's products; (b) that defendants have no authority to force plaintiff to vary such language; (c) that defendants exceed their authority in seeking to compel plaintiff to include in its advertising the warnings demanded by defendants; (d) that defendants have no lawful authority to require plaintiff to include in its advertising warnings concerning consequences which might result in the use of the products contrary to the directions on the labels, and (e) that plaintiff has fully complied with all legal requirements imposed by the Federal Trade Commission Act upon its advertising of its products.

The defendants move to dismiss the complaint on the grounds (1) that this court lacks jurisdiction over the subject matter of the complaint and (2) that the complaint fails to state a claim against the defendants upon which relief can be granted.

By the act approved September 26, 1914, Congress created the Federal Trade Commission, defined its powers and prescribed its duties. Section 5 of that act, as amended (15 U. S. C. A. sec. 45 (a)), denounced "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce" and declares them unlawful. The Commission is "empowered and directed to prevent persons, partnerships, or corporations (with certain exceptions not material here) from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

It is to be noted that while the Congress defined certain of the words used in the act, it did not undertake to define the expressions "unfair methods of competition" and "unfair or deceptive acts or practices." However, with reference to the latter expression, "unfair or deceptive acts or practices," it did provide that the "dissemination or the causing to be disseminated of any *false advertisement* within the provisions of subsection (a) of this section (15 U. S. C. A. sec. 52 (a)) shall be an unfair or deceptive act or practice in commerce within the meaning of section 45 of this title" (15 U. S. C. A. sec. 52 (b)).

The term "false advertisement," for the purposes of sections 52, 53 and 54 of title 15 U. S. C. A., is defined to mean "an advertisement, *other than labeling*, which is misleading in a material respect" (15 U. S. [437] C. A. sec. 55). In order to determine whether any advertisement is misleading "there shall be taken into account (*among other things*) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual" (15 U. S. C. A. sec. 55 (a)).

The dissemination of a "false advertisement" by a corporation otherwise than on the labels carried by its products is an unfair or deceptive act or practice which is declared unlawful and which the Federal Trade Commission is empowered and directed to prevent. "The term 'labeling' means all labels and other written, printed or graphic matter (1) upon any article or any of its containers or wrappers or (2) accompanying such article" (21 U. S. C. A. 321 (m))."

It appears that the plaintiff does advertise its products otherwise than by labeling, as above defined, through a publication designated

"Miles New Weather Almanac and Hand Book of Valuable Information," "and/or other publications" par. 2, Exhibit B).

The complaint does not exhibit the almanac or other publications containing its advertisements but, as we have seen, it alleges that the plaintiff's advertisements include one of the following statements: "Full Directions on Package—Read Them" or "Read Full Directions on Bottle" or other similar cautionary directions. However, the "full directions" on the package or bottle do not clearly reveal the potential danger of the products when excessively used.

The Federal Trade Commission Act (15 U. S. C. A. sec. 45 (b)) provides that "whenever the Commission shall have reason to believe that any * * * corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such * * * corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least 30 days after the service of said complaint."

A proceeding under this section of the Federal Trade Commission Act is a special statutory proceeding which may only be brought by and before the Commission. There is no statutory provision authorizing such a proceeding to be brought in or reviewed by a District Court. No adversary proceeding between the Commission and the plaintiff could be brought in the District Court for the purpose of determining whether the practices referred to in the complaint and proposed stipulation constitute unfair methods of competition or unfair or deceptive acts or practices in commerce prohibited by the Federal Trade Commission Act. Therefore, unless such jurisdiction is conferred by the Declaratory Judgment Act, the District Court has no jurisdiction to determine issues, either of fact or of law, which would be presented by a proceeding upon complaint by the Commission.

It is well settled that the Declaratory Judgment Act is not, in itself, a source of Federal jurisdiction and did not enlarge the pre-existing jurisdiction of the Federal courts. *Doehler Metal Co. v. Warren*, 76 U. S. App. D. C. 60, 129 F. (2d) 43; *Utah Fuel Co. v. National Bituminous Coal Commission*, 69 App. D. C. 333, 101 F. (2d) 426; *Aetna Casualty & Surety Co. v. Quarles*, (4th Cir.), 92 F. (2d) 321.

Furthermore, the action of the Commission in determining that it has "reason to believe" that plaintiff has been or is using unfair methods of competition or unfair or deceptive acts or practices in commerce is a judgment based upon an exercise of discretion, and is the first or preliminary step necessary in assuming jurisdiction. As is well said by Mr. Justice Miller in *Utah Fuel Co. v. National Bituminous Coal Commission*, *supra*:

"To permit judicial review, either by injunction or declaratory judgment, of every procedural, preliminary, and interlocutory order or ruling by which a person may consider himself aggrieved, would afford opportunity for constant delays in the course of administrative proceedings and would render orderly administrative procedure impossible. Moreover, it would result in bringing to the courts such an avalanche of trivial procedural questions as largely to monopolize their time and energies. That [438] some injury may result from appellants being forced to await the entry of a final order before securing judicial review is a regrettable but not controlling factor under such circumstances.

The question of the Commission's jurisdiction to proceed will be passed on by the Commission. The plaintiff may raise that question in the proceeding before the Commission and obtain a ruling. If the Commission erroneously assume jurisdiction and issues an order to cease and desist, such an order and the proceedings upon which it is based are subject to review by and only by a Circuit Court of Appeals of the United States. The jurisdiction of that court to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive" (15 U. S. C. A. sec. 45 (d)).

The plaintiff stresses the inconvenience and cost of requiring it to engage in the trial of a complaint before the Commission. Such an objection is not new and the courts have invariably held that inconvenience and expense of litigation is "part of the social burden of living under government." *Petroleum Exploration, Inc., v. Public Service Comm.*, 304 U. S. 209, 58 S. Ct. 834, 841, 82 L. Ed. 1294; *Bradley Lumber Co. v. National Labor Relations Board*, 5 Cir. 84 F. (2d) 97, 100, certiorari denied 299 U. S. 559, 57 S. Ct. 21, 81 L. Ed. 411; *Roche v. Evaporated Milk Assn.*, 319 U. S. 21, 63 S. Ct. 938, 87 L. Ed. 907, decided May 3, 1943.

The motion to dismiss must be sustained, and it is so ordered.

DECREE DISMISSING ACTION

This cause coming on to be heard upon the complaint and the defendants' motion to dismiss, and the court having fully heard and considered said motion and being of the opinion that it lacks jurisdiction over the subject matter of the complaint for the reasons set forth in its opinion filed herein on the 21st day of June 1943.

It is ordered, adjudged and decreed that the defendants' motion be, and the same hereby is, granted and that this action be, and it hereby is, dismissed, with costs to be borne by the plaintiff.

PHILIP R. PARK, INC., v. FEDERAL TRADE COMMISSION¹

No. 9907—F. T. C. Docket 4504

(Circuit Court of Appeals, Ninth Circuit. June 29, 1943. Rehearing denied July 26, 1943)

FINDINGS OF COMMISSION—EVIDENCE—MISREPRESENTATION—PROPERTIES OF PRODUCT—MEDICINAL PREPARATIONS.

Findings of Federal Trade Commission that petitioner was making false representations as to medicinal value of a preparation were supported by substantial evidence, were not contrary to the evidence, and did not omit material facts established by the evidence. Federal Trade Commission Act, secs. 4, 5 (a), 12, 15, 15 U. S. C. A., secs. 44, 45 (a), 52, 55; Rules for Circuit Court of Appeals, Ninth Circuit, rules 5, 19 (6).

EVIDENCE—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—1936 PRACTICE—IN 1940 PROCEEDING—ADMISSIBILITY.

Evidence of advertising used in 1936 was admissible on issue of unfair methods of competition in proceeding brought in 1940 by Federal Trade Commission for a cease and desist order. Federal Trade Commission Act, secs. 5 (a-c), 12, 15, 15 U. S. C. A., secs. 45 (a-c), 52, 55.

EVIDENCE—CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES MISREPRESENTATION—PROPERTIES OF PRODUCT—RADIO ADVERTISING.

In proceeding to review cease and desist order of Federal Trade Commission directed against petitioner who was allegedly making false representations as to medicinal value of a preparation, testimony concerning radio advertising received without objection was admissible.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—DISCONTINUANCE BEFORE HEARING—ADVERTISING FALSELY OR MISLEADINGLY—PROPERTIES OF PRODUCT—MEDICINAL PREPARATIONS.

That advertising containing false representations as to medicinal value of certain preparation was discontinued before hearing on a cease and desist order of Federal Trade Commission did not prevent issuance of order.

(The syllabus, with substituted captions, is taken from 136 F. (2d) 428)

On petition to review an order of Commission, order affirmed.

Mr. Daniel Dougherty, of Los Angeles, Calif., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. Karl E. Steinhauer*, all of Washington, D. C., for respondent.

Before DENMAN, MATHEWS, and STEPHENS, *Circuit Judges*.

MATHEWS, *Circuit Judge*.

Here for review is an order of the Federal Trade Commission "that [petitioner], Philip R. Park, Inc., a corporation, its officers,

¹ Reported in 136 F. (2d) 428. For case before Commission, see 38 F. T. C. 541.

representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their products 'Granular Parkelp' or 'Parkelp Tablets,'¹ 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 other means in commerce as 'commerce' is defined in the Federal Trade Commission Act² [15 U. S. C. A. secs. 41-58], which advertisement represents, directly or through inference:

"(a) That [petitioner's] preparation³ has any therapeutic value in excess of that afforded by the iodine content thereof;

[429] "(b) That [petitioner's] preparation contains iron, copper, calcium, phosphorus, sodium, potassium, magnesium, sulphur, or other minerals in quantities sufficient to have therapeutic value in the treatment or prevention of diseases or conditions resulting from a deficiency in such minerals, or that it will build resistance to mineral deficiency diseases or furnish food minerals other than iodine in quantities sufficient to be of value in combating mineral deficiency diseases;

"(c) That [petitioner's] preparation contains minerals which are not present in land foods, or that the average diet is deficient in the minerals necessary for proper functioning and health of the human body."

The order was issued in a proceeding by the Commission against petitioner under section 5 (b) of the Federal Trade Commission Act, 15 U. S. C. A. sec. 45 (b), and was based on findings to the effect that petitioner was engaged in the business of selling and distributing Parkelp (Granular Parkelp and Parkelp Tablets) in commerce;⁴ that petitioner was in competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of like or similar products in commerce; that, in the course and conduct of its business, petitioner disseminated false advertisements by United States mails and by other means in commerce for the

¹ "Parkelp" is the trade name of a dehydrated kelp product sold in powdered form and in tablets. The powder is called Granular Parkelp. The tablets are called Parkelp Tablets.

² Sec. 4 of the act, 15 U. S. C. A. sec. 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."

³ Parkelp (Granular Parkelp or Parkelp Tablets) or any other product of substantially similar composition or possessing substantially similar properties.

⁴ See footnote 2.

purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of Parkelp; that said advertisements contained the representations set forth in paragraphs (a), (b), and (c) of the order; that said representations were false, misleading, and deceptive; that by said advertisements trade had been diverted to petitioner from its competitors; and that the dissemination of said advertisements constituted an unfair method of competition in commerce and an unfair and deceptive act or practice in commerce.⁵ The findings are supported by evidence and hence are conclusive.⁶

As required by our rules,⁷ petitioner filed with the clerk a statement of the points on which it intended to rely on this review. The points stated were:

1. The findings of fact made by the Federal Trade Commission are not sustained by substantial evidence.
2. The findings, as made, are contrary to the evidence.
3. The findings omit material facts established by the evidence.
4. Material facts established by the evidence, not found by the Commission, require findings of fact on which a dismissal of the Commission's complaint should have been ordered.

Petitioner has not argued these points, but has argued the following points instead:

(a) That no properly qualified expert was produced by the Commission on whose opinion condemnation of petitioner's advertising should be made.

(b) That evidence of advertising used in 1930, and prior thereto * * * is not evidence of advertising used in 1940 (hearing date),⁸ or of advertising to be used in 1941 (order date),⁹ especially since the law defining a false advertisement¹⁰ did not become effective until March 21, 1933.

(c) That the evidence introduced by the Commission as to radio advertising * * * violates the best evidence rule (acetate transcriptions are the best evidence) and what evidence was introduced shows that radio advertising was discontinued nearly 2½ years prior to the filing of the complaint, 4 years prior to the hearing, and 5 years prior to the order.

There is nothing in any of the points stated or argued. The findings are supported by substantial evidence, are not contrary to the evidence and do not omit material facts established by the evidence. The evidence did not establish facts requiring a dismissal of the complaint. The Commission produced two properly qualified experts—Dr. Lewis T. Bullock and Dr. [430] Ewart S. Miller. Evidence of advertising used in 1936 was admissible on the issue of unfair methods of competition. Cf. *Federal Trade Commission v.*

⁵ Federal Trade Commission Act, secs. 5 (a), 12, 15, 15 U. S. C. A., secs. 45 (a), 52, 55.

⁶ Federal Trade Commission Act, sec. 5 (c), 15 U. S. C. A. sec. 45 (c).

⁷ See Rule 19 (6) of our rules governing appeals and rule 5 of our rules governing petitions for review.

⁸ The hearing was commenced on June 3, 1940, and concluded on September 11, 1940.

⁹ The order was issued on June 30, 1941.

¹⁰ Act of March 21, 1938, c. 49, 52 Stat. 111-117, amending secs. 1, 4 and 5 of the Federal Trade Commission Act and adding secs. 12-18 to the act. This proceeding was commenced on June 9, 1939.

Raladam Co., 316 U. S. 149 [34 F. T. C. 1843]; *Electro Thermal Co. v. Federal Trade Commission*, 9 Cir., 91 F. (2d) 477 [25 F. T. C. 1695]; *Alberty v. Federal Trade Commission*, 9 Cir., 118 F. (2d) 669 [32 F. T. C. 1871]. Whether or not it was admissible on the issue of unfair or deceptive acts or practices need not be considered. The testimony concerning radio advertising was received without objection and was clearly admissible. That such advertising was discontinued before the hearing is immaterial. The *Federal Trade Commission v. Good-year Tire & Rubber Co.*, 304 U. S. 257, 260 [26 F. T. C. 1521]; *Juvenile Shoe Co. v. Federal Trade Commission*, 9 Cir., 289 Fed. 57, 59-60 [6 F. T. C. 594].

Order affirmed.

J. B. LIPPINCOTT COMPANY v. FEDERAL TRADE COMMISSION¹

No. 7927—F. T. C. Docket 3558

(Circuit Court of Appeals, Third Circuit. June 30, 1943)

FEDERAL TRADE COMMISSION ACT—FINDINGS OF COMMISSION—CONCLUSIVENESS OF UNDER STATUTE—SUPPORTING EVIDENCE REQUIRED AS SUBSTANTIAL.

Under provision of Federal Trade Commission Act regarding conclusiveness of Commission's findings, findings must be supported by substantial evidence. Federal Trade Commission Act sec. 5 (c), as amended, 15 U. S. C. A. sec. 45 (c).

FINDINGS OF COMMISSION—SUPPORTING EVIDENCE REQUIRED AS SUBSTANTIAL—WHAT CONSTITUTES.

"Substantial evidence" with which findings of Federal Trade Commission must be supported, is evidence that affords a substantial basis from which fact in issue can be reasonably inferred and is more than a scintilla and must do more than create a suspicion of existence of fact to be established.

FINDINGS OF COMMISSION—SUPPORTING EVIDENCE REQUIRED AS SUBSTANTIAL—IF BASED ON INFERENCE—WHERE TWO INCONSISTENT INFERENCES EQUALLY SUPPORTED BY.

Where evidence, which is entirely circumstantial, equally supports either of two opposed or inconsistent inferences, a fact cannot be deemed thereby to have been established with certainty required to render it substantial, as necessary to render finding of Federal Trade Commission conclusive.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION IN RESTRAINT OF TRADE—REFUSAL TO SELL CERTAIN DISTRIBUTORS—BASIC FINDINGS—WHETHER SUPPORTED BY SUBSTANTIAL EVIDENCE.

Finding of Federal Trade Commission that publisher of medical books participated in carrying out unlawful combination and agreement not to sell medical books to certain distributors was not supported by "substantial evidence" and did not justify cease and desist order against publisher.

(The syllabus, with substituted captions, is taken from 137 F. (2d) 490.)

¹ Reported in 137 F. (2d) 490. For case before the Commission, see 35 F. T. C. 382.

On petition to review cease and desist order of Commission, which ran against five respondent concerns, including petitioner, and had become final against the others, they not having appealed order, insofar as it related to petitioner, set aside as not sustained by the evidence.

Mr. Benjamin O. Frick, of Philadelphia, Pa., for petitioner.

Mr. Joseph J. Smith, Jr., of Washington, D. C., Assistant Chief Counsel, Federal Trade Commission (*Mr. W. T. Kelley*, Chief Counsel, Federal Trade Commission, and *Messrs. J. B. Truly, Fletcher G. Cohn* and *James W. Nichol*, Special Attorneys, all of Washington, D. C., on the brief) for respondent.

Before BIGGS, MARIS and JONES, *Circuit Judges*.

[490] JONES, *Circuit Judge*:

This is a petition to review a cease and desist order entered by the Federal Trade Commission in a proceeding under section 5 (b) of the Federal Trade Commission Act as amended, 15 U. S. C. A. section 45 (b). In addition to the J. B. Lippincott Co., the present petitioner, the order also runs against Chicago Medical Book Co., W. B. Saunders Co., C. V. Mosby Co., and Van Antwerp Lea and Christian Febiger, partners, trading and doing business as Lea & Febiger.

The Chicago Medical Book Co., of Chicago, Illinois, is a distributor of medical books, while the Saunders Co., the Mosby Co., and Lea & Febiger are publishers of medical books exclusively, and sell only their respective publications. The Lippincott Co., whose principal office and place of business is in Philadelphia, also publishes some medical books, but the principal part of its business is the publication and sale of books other than medical. Lippincott, too, sells only books of its own publication. The offenses charged by the complaint do not involve the sale of books other than medical.

The complaint alleges that the Chicago Medical Book Co. and the publishers above named, including the Lippincott Co., agreed and conspired among themselves not to sell medical books to the Wilcox & Follett Co., a book distributor of Chicago, and that, in pursuance of such agreement and understanding, they refused so to sell to Wilcox & Follett. The complaint also charges a like agreement and conspiracy between the Chicago Medical Book Co., the Lippincott Co., and the Mosby Co., with respect to [491] Login Brothers, another book distributor of Chicago.

The Lippincott Co. filed a separate answer denying its participation in any agreement or conspiracy not to sell medical books either to Wilcox & Follett or to Login Brothers, and further denying that it ever refused to sell books to either of the concerns named. Each of the other respondents to the Commission's complaint filed a separate

answer denying the material allegations of the complaint, but, with that, we need not be concerned, as the Lippincott Co. alone has petitioned for a review of the Commission's order.

After hearing, the Commission found an unlawful agreement or conspiracy among the respondents not to sell medical books and a refusal thereafter to sell, substantially as charged by the complaint. The order now complained of was thereupon entered. The order directs all the respondents named in the complaint to cease and desist, in connection with the sale of medical books, or any other scientific, educational or other books, from "Entering into or carrying out any agreement, understanding, arrangement, combination, or conspiracy, among themselves or between and among any two or more of them or between any one or more of them and any competitor, for the purpose or with the effect of restraining, restricting, hindering, obstructing or eliminating competition in the sale of any such book or books, and * * * from doing any of the * * * acts or things" more particularly set forth in the order.

It is the contention of the Lippincott Co. (1) that so far as it is concerned, the findings whereon the Commission's cease and desist order is based are not supported by evidence and (2) that the order exceeds the scope and allegations of the complaint.

The right to court review of a Commission order exists by virtue of section 5 (c) of the Federal Trade Commission Act (15 U. S. C. A. sec. 45 (c)) which also provides that "The findings of the Commission as to the facts, if supported by evidence, shall be conclusive." This provision has been treated as requiring substantial evidence as the basis for findings in order to render them conclusive. See *Kidder Oil Co. v. Federal Trade Commission*, 117 F. (2d) 892, 895 (C. C. A. 7). The same view was taken with respect to the requirement, "if supported by testimony," as the particular provision originally read in the Federal Trade Commission Act (38 Stat. 719, 720, c. 311, sec. 5) before amendment. See *Federal Trade Commission v. Curtis Publishing Company*, 260 U. S. 568, 580. In *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 229, where a similar provision of the National Labor Relations Act with respect to the findings of the Labor Board was under consideration, the Supreme Court said that the requirement of evidence as support for findings means substantial evidence. Compare also *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 206 U. S. 292, 299, where the necessity for substantial evidence was spoken of as being applicable in general to findings by administrative bodies. We entertain no doubt that the provision of the Federal Trade Commission Act as to the conclusiveness of the Commission's findings requires that the findings be supported by substantial evidence.

In the *Columbian Enameling & Stamping Co.* case, *supra*, at pages 299, 300, it was said that “* * * evidence which is substantial * * * [affords] a substantial basis of fact from which the fact in issue can be reasonably inferred. [Citing cases.] Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. ‘It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion’, *Consolidated Edison Co. v. National Labor Relations Board*, *supra*, page 229, and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.” [Citing cases.] We have then to consider whether the Commission’s findings in the instant case, so far as they relate to the Lippincott Co., are supported by substantial evidence as thus defined.

Although the order has become final as to all respondents named in the complaint, save for the present petitioner, and a large portion of the evidence taken by the Commission relates to others than the Lippincott Co., it is necessary to our present inquiry that we also review the evidence relating to the other respondents, as it is [492] upon that background and certain additional facts pertaining to the Lippincott Co. that the Commission bases its conclusion of fact that the Lippincott Co. acted in concert with some or all of the other respondents to the end that Wilcox & Follett were refused the right to purchase medical books published by Lippincott and the other impleaded publishers.

Basic to the Commission’s ultimate conclusion against Lippincott is its primary finding that in May 1936 a representative of the Saunders Co. met in Kansas City, Mo., with the president of the Chicago Medical Book Co., a representative of the Mosby Co., a representative of Lea & Febiger and representatives of three other dealers in medical books, not made parties to the proceeding, and that as a result of that meeting an agreement or understanding was arrived at not to sell medical books to Wilcox & Follett, the means for effecting such agreement having been left to the president of the Chicago Medical Book Co. The Commission did not find, however, that anyone from the Lippincott Co. was present at the meeting in Kansas City or that it was otherwise represented thereat. Nor is there any evidence that what transpired at the Kansas City meeting was ever brought to the knowledge of the Lippincott Co. In fact, the Commission now concedes (its brief, p. 25) that “It is true, as petitioner [Lippincott Co.] states (brief, p. 6), that petitioner had no representative at the Kansas City meeting and that no *express* agreement not to sell Wilcox & Follett Co. at customary dealers’ discounts was proved as to petitioner.”

We do not cite the above concession by the Commission with any thought of suggesting that an express agreement to engage in concerted action for the accomplishment of the alleged unlawful object is requisite to the conspiracy charged.¹ However, inasmuch as submission by the Lippincott Co. to the purpose and requirements of the alleged wrongful undertaking (express as to all others) is made to depend entirely upon inference, the absence of any proof of express assent by Lippincott to the agreement is not without its appropriate bearing when we come to consider whether the conduct of the Lippincott Co., to which the Commission necessarily attaches controlling significance, is sufficient in law to warrant an inference that, consequent upon the agreement and in furtherance thereof, Lippincott refused to sell books to Wilcox & Follett. The fact is that the Commission made no specific finding of any deliberate refusal by Lippincott to sell medical books to Wilcox & Follett but contented itself with a general conclusion embrasive of that essential element by implication. The facts from which the Commission drew its ultimate conclusion are as follows.

On September 19, 1936, the Chicago Medical Book Co., in evident furtherance of the subject-matter discussed at the Kansas City meeting in May preceding, wrote to a number of publishers, including each of those named in the complaint (except for the W. B. Saunders Co.²), and five other publishers of medical books. Viewed in a light most favorable to the Commission's findings, the letter set forth that the Chicago Medical Book Co. did not intend to do any further business with Wilcox & Follett, who had been so notified; it assigned as a reason for such action Wilcox & Follett's willful continued wholesale price-cutting to the demoralization of the retail medical book business in the Chicago district; and it concluded with the statement that "We are writing you thus so that you will understand any applications for books direct to you from Wilcox & Follett Co." The Commission construes the latter suggestion, and [493] we think not unreasonably, as an exhortation by the Chicago Medical Book Co. to the recipients of the letter not to sell books to Wilcox & Follett direct. In its answer to the complaint, the Lippincott Co. admits its receipt of the Chicago Medical Book Co.'s letter of September 19 which Lippincott neither acknowledged nor otherwise replied to.

¹ See *United States v. Masonite Corp.*, 316 U. S. 265, 275; *Interstate Circuit v. United States*, 306 U. S. 208, 227; *United States v. Patten*, 226 U. S. 525, 543; *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 62; *Eastern States Retail Lumber Dealers' Assn. v. United States* 234 U. S. 600, 612; *Bausch Machine Tool Co. v. Aluminum Co. of America*, 72 F. (2d) 236, 241 (C. C. A. 2), cert. den. 293 U. S. 580; *Southern Hardware Jobbers' Assn. v. Federal Trade Commission*, 290 Fed. 773, 779-780 (C. C. A. 5); *Wholesale Grocers' Assn. v. Federal Trade Commission*, 277 Fed. 657, 662-663 (C. C. A. 5).

² The Chicago Medical Book Co. had broad authority in respect of the sale of books published by the W. B. Saunders Co.

Following receipt of the Chicago Medical Book Co.'s letter, the Lippincott Co. on September 29, 1936, referred for fulfillment by the Chicago Medical Book Co. an order from Wilcox & Follett for medical books, and again on October 7, 1936, did likewise with respect to an order from Wilcox & Follett for one medical book. However, it also indisputably appears from the evidence produced by the Commission that on September 25, 1936, the Lippincott Co. filled and billed direct to Wilcox & Follett an order for medical books, another like order on October 7, 1936, and two similar orders on October 12, 1936. The Commission's evidence further discloses that for a number of years prior to September 1936 and thereafter the Lippincott Co. had on consignment with the Chicago Medical Book Co. certain books published by the Lippincott Co., whose practice it was with respect to orders originating in the Chicago district either to refer such orders to the Chicago Medical Book Co. for fulfillment from the books there on consignment or to fill them direct from Lippincott's place of business in Philadelphia as it chose. Neither the Chicago Medical Book Co. nor Wilcox & Follett informed Lippincott that the two orders referred on September 29 and October 7 had not been filled until, as the Commission's witness Follett testified, after "a very short intervening space"—"probably less than 2 months" he "wrote to * * * [his] friend, Mr. Joe Lippincott" who was "President of the Lippincott Co." Thereupon the two unfilled referred orders were filled direct to Wilcox & Follett by the Lippincott Co. Follett also testified in the same connection that at that time Lippincott " * * * invited us to come back and buy all the medical books we could possibly use, direct from J. B. Lippincott Co., and our relationship has been very cordial." According to Follett's testimony, except for the delay for "a very short intervening space" in the fulfillment of the two orders referred by Lippincott on September 29 and October 7, 1936, there was no other instance of even delay in Lippincott's fulfillment of a Wilcox & Follett order down to the time of the hearing before the Commission in 1940 on the complaint which was not filed until August 26, 1938.

Assuming for the sake of argument that the testimony is sufficient to justify an inference that Lippincott's reference of the two orders on September 29 and October 7, 1936, was but a subterfuge availed of to prevent Wilcox & Follett from obtaining medical books, it is by no means an exclusive inference. Equally permissible is the inference that the reference by Lippincott of the two particular orders was but in pursuance of its long established practice to refer some orders while filling others direct and was not designed to deny the customer its requirements. If it be suggested that the prior status could no longer be deemed to obtain after the Chicago Medical Book Co.'s letter of September 19, it is also a fact that Lippincott plainly ignored

the suggestion in that letter by filling and billing direct, between September 25 and October 12, 1936, four other orders of Wilcox & Follett for medical books. Furthermore, while the letter of September 19 stated the Chicago Medical Book Co.'s intention not to do further business with Wilcox & Follett, it did not say that they would refuse to honor an order referred by Lippincott to be filled from the books which it had there on consignment. The Commission asserts that the four orders filled and billed direct "slipped by." But why should four orders out of six over the critical period be assumed to have "slipped by" and the two remaining orders be conclusively presumed to have been referred for an ulterior purpose? If, in referring the two orders, Lippincott was acting to prevent Wilcox & Follett from obtaining medical books, why then did it fill contemporaneously four other orders? In fact, Lippincott filled an order of Wilcox & Follett on one day (October 7) and on the same day referred another order of the same company.³

The Commission's conclusion that Lippincott participated in carrying out the unlawful combination charged by the complaint stems from the erroneous assumption (Commission's brief, p. 34) "that the [494] petitioner [Lippincott Co.], the other respondent publishers and Chicago Medical Book Co. all discontinued sales and discounts to Wilcox & Follett Co. at about the same time; * * *." Actually, Lippincott did not discontinue sales and discounts to Wilcox & Follett at any time. Even the two orders referred to the Chicago Medical Book Co. on September 29 and October 7, 1936, were filled by Lippincott direct to Wilcox & Follett as soon as the latter made known to Lippincott that the Chicago Medical Book Co. had not filled those orders. The Commission argues that offenses cognizable by the Federal Trade Commission are not to be atoned by repentance after a proceeding for their correction has been instituted. So much may readily be conceded. But that does not mean that the prompt correction of what might have appeared to be an offense or, possibly, could have become an offense, if uncorrected, is to be robbed of its evidential value as clarification or exculpation merely because the Commission at some later date seeks to take cognizance of the matter. Here the only things complained of, which certainly did not amount to a refusal by Lippincott to sell medical books to Wilcox & Follett, occurred more than a year and 9 months prior to the filing of the complaint in this case, during all of which time Wilcox & Follett met with no difficulty in buying medical books direct from Lippincott Co. The cases cited by the Commission in this connection involve efforts by offending parties to exculpate themselves by corrective action taken after pro-

³ The referred order of October 7, 1936, was for one copy of a book, the list price whereof, less discount, was \$3.75.

ceedings for the eradication of the offenses have been instituted. Such is not the instant case.

The Commission also makes point of the fact that Widmer, sales manager of Lippincott Co.'s medical book department, in letters to Wilcox & Follett alluded to Chicago Medical Book Co. as Lippincott's exclusive agent in Chicago for the sale of certain medical books, which was not the fact. Phillips, who succeeded Widmer as sales manager of Lippincott's medical book department and who testified at the hearing as a witness for the Commission, made plain that Lippincott merely had some medical books on consignment with the Chicago Medical Book Co. without any exclusive agency, as the Commission concedes (its brief, p. 33). Widmer had died prior to the hearing so that what his understanding of Lippincott's relation to the Chicago Medical Book Co. may have been was not open to further explanation by him. But, even inferring from his letters most strongly against the petitioner, there is still no substantial evidence to support an inference that Lippincott refused to sell medical books to Wilcox & Follett. The Widmer letters neither stated nor suggested any such refusal and, as we have already seen, the other evidence in the case introduced by the Commission showed uniform fulfillment by Lippincott of Wilcox & Follett's orders even including the two referred orders which Chicago Medical Book Co. refused to fill.

The evidence relied upon by the Commission for its basic primary inference of a refusal by Lippincott to sell medical books to Wilcox & Follett supports just as readily an inference of innocent intent on the part of the Lippincott Co. Evidence which is entirely circumstantial and which equally supports either of two opposed or inconsistent inferences cannot of itself be deemed to furnish substantial support for one of such inferences to the exclusion of the other. See *Pennsylvania Railroad Co. v. Chamberlin*, 288 U. S. 333, 339, and cases there cited. In connection with findings of an administrative body, it was said in *Appalachian Electric Power Co. v. National Labor Relations Board*, 93 F. (2d) 985, 989 (C. C. A. 4), that evidence "which gives equal support to inconsistent inferences" is not substantial. See also *National Labor Relations Board v. Sun Shipbuilding & Dry Dock Co.*, 135 F. (2d) 15 (C. C. A. 3). Applying these principles to the facts of the instant case, it follows that the Commission's finding that the Lippincott Co. subscribed to and helped carry out an agreement not to sell medical books to Wilcox & Follett is not supported by substantial evidence.

The case against the petitioner with respect to the sale of medical books to Login Brothers is wholly lacking in any evidence that the petitioner agreed with anyone not to sell medical books to Login Brothers or that it ever refused to sell to them. The Commission concludes generally in its twentieth finding of fact that "The methods

used by respondents in preventing Login Brothers from securing their supplies were essentially the same as in the case of Wilcox & Follett Co." The relative insufficiency of any basis for that conclusion is the more marked when we consider [495] that there was no meeting of the alleged conspirators in the case of Login Brothers such as the Kansas City meeting with respect to Wilcox & Follett and that there was no letter from Chicago Medical Book Co. to the respective publishers stating its intention not to do any further business with Login Brothers.

The evidence with respect to a refusal to sell medical books to Login Brothers consists entirely of conversations which each of the two Login brothers had separately with Speakman, president of the Chicago Medical Book Co., wherein the latter is said to have told them that they were selling too many books, that the Chicago Medical Book Co. could sell the books without their assistance and that the Chicago Medical Book Co., would not sell them any more books; that the last sale by the Chicago Medical Book Co. to Login Brothers was on December 26, 1937; and that by letter to Login Brothers dated January 3, 1938, the Lippincott Co., stated that it was forwarding to the Chicago Medical Book Co. for their attention an order of December 31 from Login Brothers, for which the Lippincott Co. thanked them "kindly." It is on the basis of the reference of this one order that the Commission concludes that the petitioner was a party to a conspirative agreement not to sell medical books to Login Brothers and that it had by its reference on January 3, 1938, of Login Brothers' order refused to sell to them. Yet there was no evidence that the Lippincott Co. was ever informed of the Login Brothers' conversations with Speakman or that it knew that the Chicago Medical Book Co. would not sell to Login Brothers. Nor was there any evidence that either Login Brothers or the Chicago Medical Book Co. ever notified the Lippincott Co. that the order from Login Brothers referred by Lippincott on January 3, 1938, to Chicago Medical Book Co. was not filled. The next thing that Lippincott heard from Login Brothers was an order from them in July 1939, which Lippincott filled. The evidence was wholly insufficient to support a finding that the petitioner agreed with Chicago Medical Book Co. and the Mosby Co. or anyone else not to sell medical books to Login Brothers or that the petitioner ever refused to sell to Login Brothers.

In the view we thus take of the case, it is unnecessary for us to consider whether the order, which is made applicable to "scientific, educational or other books" in addition to books commonly known as "medical books," exceeds the scope of the complaint.

The order of the Commission in so far as it relates to the petitioner must be set aside.

AMERICAN MEDICINAL PRODUCTS, INC. ET AL. v.
FEDERAL TRADE COMMISSION¹

No. 9860—F. T. C. Docket 4159

(Circuit Court of Appeals, Ninth Circuit. June 30, 1943)

FINDINGS OF COMMISSION—WHERE SUPPORTED BY EVIDENCE.

Findings of fact of Federal Trade Commission, supported by evidence, are binding on Circuit Court of Appeals. Federal Trade Commission Act, sec. 5 (c), 15 U. S. C. A., sec. 45 (c).

CEASE AND DESIST ORDERS—EXTENT—MISLEADING ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—PROPERTIES OF PRODUCT—FAILURE TO REVEAL—REDUCING PREPARATIONS.

An order of Federal Trade Commission that petitioner cease and desist from disseminating in interstate commerce any advertisement falsely representing that petitioner's preparation is a cure for obesity was not objectionable as requiring petitioner to reveal facts respecting consequences which might result from use of the remedy. Federal Trade Commission act, secs. 4, 5 (a), 12, 15, 15 U. S. C. A., secs. 44, 45 (a), 52, 55.

FEDERAL TRADE COMMISSION ACT—FALSE ADVERTISEMENTS—DISSEMINATION BY THE MAILS, ETC.—PROHIBITION'S VALIDITY.

A medicinal products corporation has no constitutional right to disseminate false advertisements in interstate commerce for purpose of inducing purchase of its preparation as a treatment for obesity, and Congress has power to prohibit such dissemination.

(The syllabus, with substituted captions, is taken from 136 F.
(2d) 426)

On petition to review order of Commission, order affirmed.

Mr. Carl B. Sturzenacker, of Los Angeles, Calif. (*Mr. Charles H. Rowan*, of Milwaukee, Wis., of counsel), for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. J. J. Smith, Jr.*, assistant chief counsel, both of Washington, D. C., for respondent.

Before DENMAN, MATHEWS, and STEPHENS, *Circuit Judges*.

MATHEWS, *Circuit Judge*:

Here for review is an order of the Federal Trade Commission that petitioners, American Medicinal Products, Inc., and Ernest G. Rurup, in connection with the offering for sale, sale, or distribution of their medicinal preparation known as Re-Duce-Oids, or any other preparation of substantially similar properties, whether sold under the same or under any other name, do forthwith cease and desist from directly or indirectly—

¹ Reported in 136 F. (2d) 426. For case before the Commission, see 32 F. T. C. 1376.

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,¹ 15 U. S. C. A. secs. 41-58, which advertisement represents, directly or through inference, that said preparation is a cure or remedy for obesity or constitutes a safe, competent or effective treatment therefor, or which advertisement fails to reveal that said preparation should only be used under competent medical supervision; that the unsupervised use of said preparation by persons not skilled in the diagnosis and treatment of thyroid conditions may result in serious and irreparable injury to health; that said preparation is definitely harmful if used by persons having diabetes, goiter, tuberculosis, arteriosclerosis or coronary diseases; and that the use of said preparation over a long period of time may cause the breaking down of muscular and other tissues, as well as fat tissues, causing irritation of nerve tissue, nervousness, irritability, and increased heart rate, with possible irreparable injury to health even to a normal individual.

2. Disseminating, or causing to be disseminated, any such advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce.

The order was issued in a proceeding by the Commission against petitioners under section 5 (b) of the Federal Trade Commission Act, 15 U. S. C. A. section 45 (b), and was based on findings to the effect that petitioners were engaged in the business of selling and distributing in commerce² their medicinal preparation known as Re-Duce-Oids; that said preparation was recommended by petitioners as a cure or remedy for obesity and as a safe, competent, and effective treatment therefor; that said preparation is not in fact a cure or remedy for obesity or a safe, competent or effective treatment therefor; that said preparation should only be used under competent medical supervision; that the unsupervised use of said preparation by persons not skilled in the diagnosis and treatment of thyroid conditions may result in serious and irreparable injury to health; that said preparation is definitely harmful if used by persons having diabetes, goiter, tuberculosis, arteriosclerosis, or coronary diseases; that the use of said preparation over a long period of time may cause the breaking down of muscular and other tissues, as well as fat tissues, causing irritation of

¹Sec. 4 of the act, 15 U. S. C. A., sec. 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."

²See footnote 1.

nerve tissue, nervousness, irritability, and increased heart rate, with possible irreparable injury to health even to a normal individual; that, in the course and conduct of their business, petitioners disseminated false advertisements by United States mails and by other means in commerce for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparation, and by other means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce; that said advertisements were false, misleading, and deceptive in that they represented that said preparation is a cure or remedy for obesity and is a safe, competent, and effective treatment therefor, and failed to reveal the above stated facts with respect to consequences which may result from the use of said preparation; and that the dissemination of said advertisements constituted an unfair and deceptive act or practice in commerce.³ The findings are supported by evidence and hence are conclusive.⁴

Petitioners ask us to set aside the order and, as grounds therefor, urge (1) that the Commission was not empowered to require petitioners to reveal the facts with respect to consequences which may result from the use of Re-Duce-Oids; (2) that the order is not supported by the complaint and findings; (3) that the findings are not supported by substantial evidence; and (4) that the order and the law under which it was issued⁵ are unconstitutional and void.

There is nothing in any of these points. The order does not require petitioners to reveal anything. It requires them to cease and desist from disseminating false advertisements, particularly those described in the order, but does not require them to advertise at all. If petitioners do not choose to advertise truthfully, they may, and should, discontinue advertising. The order is supported by the complaint and findings, and the findings are supported by substantial evidence. The constitutional question attempted to be raised is lacking in substance. Petitioners have no constitutional right to disseminate false advertisements by the United States mails or by any means in commerce or by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of their preparation in commerce. That Congress had power to prohibit such dissemination cannot be doubted.

Order affirmed.

³ Federal Trade Commission Act, secs. 5 (a), 12, 15, 15 U. S. C. A., secs. 45 (a), 52, 55.

⁴ Federal Trade Commission Act, sec 5 (c), 15 U. S. C. A., sec. 45 (c).

⁵ Federal Trade Commission Act, secs. 5, 12, 15, 15 U. S. C. A., secs. 45, 52, 55.

PENALTY PROCEEDINGS

Civil penalties in amount of \$7,075 were collected from January 1 through June 30, 1943, the period covered by volume 36, in the following cases, involving violations of cease and desist orders which had been certified to the Attorney General:

United States v. Wilson Chemical Co., Inc.; United States District Court for Middle District of Pennsylvania; judgment for \$1,800 entered January 29, 1943.

Wilson Chemical Co., Inc., its representatives, etc., had been ordered, in connection with sale, etc., in interstate commerce of salves and miscellaneous merchandise designated by it as "premiums," to cease and desist from representing, directly or by inference, through testimonials, contracts, advertisements, or through any other means whatever:

1. That a premium is obtainable for a less amount in either services or money than is actually the case;
2. That any premium will be sent upon the remittance of a stated amount without mention of an additional sum to cover postage or packing in cases where this extra remittance is required.¹

United States v. Cornelius P. Van Schaack, Jr., trading as The Ink Company of America and Pioneer Advertising Company, and, in another proceeding before the Commission, as *Mid-West Sales Syndicate and Mid-West Portrait Service*; United States District Court for the Northern District of Illinois, Eastern Division; judgment entered on February 23, 1943, for \$25 on each of 17 counts, making a total of \$1,275.

The Commission had ordered Cornelius P. Van Schaack, Jr., trading as The Ink Co. of America and Pioneer Advertising Co., his representatives, etc., in connection with the offer, etc., in commerce of sales promotion plans, including cards and certificates, fountain pen and pencil sets, ink and pencil leads, or other articles of merchandise in interstate commerce, to cease and desist from:

1. Representing that the Pioneer Advertising Co., or the respondent trading under his own name or under any other trade name or names, has been or is conducting a national advertising campaign designed to advertise the products of The Ink Co. of America or of any person, firm, or corporation.

¹ Docket 2874, August 24, 1936, 23 F. T. C. 301, 308.

2. Representing that the Pioneer Advertising Co., The Ink Co. of America or any other instrumentalities owned and controlled by respondent and used by him in connection with the sale and distribution of said sales promotional plans, are organizations having separate ownership and control.

3. Using the term "free" or any other term of similar import and meaning to describe or refer to goods, wares or merchandise regularly offered in connection with the purchase of specified quantities of other merchandise.

4. Representing that the pen and pencil sets have a retail value and usual selling price of \$3.50 or any other amount in excess of the price at which said pen and pencil sets are regularly and customarily sold in the ordinary course of business under normal conditions and circumstances.

5. Representing that the pen and pencil sets are nationally known or nationally advertised.

6. Representing that respondent refunds to his customers the purchase price for such certificates or makes additional payments to his customers in connection with the presentation of the certificates for redemption.

7. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time, which is not a true representation of the average net earnings or profits customarily made by respondent's active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

8. Representing that the participation by merchants in respondent's sales promotional plan is without cost to said merchants.*

On the same date, the same individual, Mr. Van Schaack, Jr., trading as Mid-West Sales Syndicate and Mid-West Portrait Service, had been made the object of a second order of the Commission, requiring him, his representatives, etc., in connection with the sale and distribution of other sales promotion plans, including cards and certificates, lanterns, batteries, bulbs, and colored and tinted photographs, or pictures made from a photographic base or impression or other articles of merchandise in interstate commerce, to cease and desist from:

1. Representing that the respondent has been or is conducting an advertising campaign designed to advertise said product.

2. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares, or merchandise, regularly offered in connection with the purchase of specified quantities of other merchandise.

* Docket 3261, May 15, 1939, 28 F. T. C. 1607, 1618.

3. Representing that the participation by merchants in respondent's sales promotional plan is without cost to said merchants.

4. Representing that respondent refunds to his customers the purchase price for such certificates or makes additional payments to his customers in connection with the presentation of the certificates for redemption.

5. Representing that the number of certificates which merchants may purchase from the respondent is limited.

6. Representing that the lanterns have a retail value and usual selling price of \$1.50 or that colored or tinted photographs have a retail value and usual selling price of \$5.50, or any other amounts in excess of the prices at which said lanterns or photographs are regularly and customarily sold in the ordinary course of business under normal conditions and circumstances.

7. Representing that the respondent supplies to his customers labels, circulars, or other advertising matter relating to said sales promotional plan.

8. Using the terms "hand-painted," "hand-painted oil portraits," or "painted," either alone or in conjunction with other terms, or any other terms of similar import or meaning, in any way to designate, describe, or refer to colored or tinted pictures, photographs, or photographic enlargements or other pictures produced from a photographic base or impression.

9. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time, which is not a true representation of the average net earnings or profits consistently made by respondent's active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.³

United States v. Melster Candy Co.; District Court for the Western District of Wisconsin; compromise offer for \$1,000 accepted March 12, 1943.

The Commission's cease and desist order directed Melster Candy Co., its representatives, etc., in connection with offer, etc., of candy in interstate commerce, to cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made, or are designed to be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers assortments of candy which are used, or which are designed to be used, without alteration or rearrangement of the contents of

³ Docket 3630. May 15, 1939. 28 F. T. C. 1620, 1631.

such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of candy, for sale to the public at retail, bars of candy, together with a device commonly called a "push card," which push card is for use, or which is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to wholesale dealers and jobbers, for distribution to retail dealers, a device commonly called a "push card," either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public that the candy is 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.⁴

United States v. Hiram Barber, doing business as Motor Equipment Specialty Co.; United States District Court for Nebraska, McCook Division; default judgment for \$500 entered March 15, 1943.

Hiram E. Barber, doing business as Motor Equipment Specialty Co., had been ordered, in connection with the sale, etc., in commerce, of certain devices designated as "Mesco Fender Roller" and "Universal Wheel Check," or any other devices of substantially similar construction or design, to cease and desist from:

1. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time which is not a true representation of the average net earnings or profits consistently made by respondent's active, full time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

2. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative or distributor for any given period of time which has not in fact been consistently earned net by such agent, salesman or distributor in the ordinary course of business and under normal business conditions.

3. Representing that the use of such fender roller will remove all dents from all fenders, or will in all cases remove dents from fenders without the necessity of hammering, grinding, filing, or performing other work on the fender, or will in all cases remove dents from fenders without causing damage to the finish of the fender.

4. Representing that such fender roller can be operated adequately or successfully without practice in the operation thereof.

⁴ Docket 3043, August 9, 1937, 25 F. T. C. 734, 741.

5. Representing that there is no competition in connection with the sale of such devices with other devices designed and intended for similar usage or that such devices are needed by every garage or shop.

6. Representing that respondent will refund the purchase price for such devices to his customers who are unable to resell the same unless and until such is the fact and unless all the terms and conditions of such offer of refund are clearly and unequivocally stated in equal conspicuousness and in immediate connection therewith.⁵

United States v. The E. R. Page Company, Inc.; District Court for the Eastern District of Michigan; dismissed without prejudice, March 18, 1943.

The E. R. Page Co., Inc., its officers, etc., had been ordered, in connection with the offering for sale, etc., of its preparations designated "Page Pile Treatment," "Page Combination Treatment," and "Page Internal Combination Pile Treatment," or any other preparations of like or similar ingredients or possessing like or similar properties, to cease and desist from representing, directly or indirectly:

1. That the use of said preparations will end pile torture or the pain incident to piles.

2. That the use of said preparations will remove or eliminate the cause or causes of piles.

3. That the use of said preparations will heal or cure piles.

4. That the use of said preparations will act as a permanent remedy for piles.⁶

United States v. American Television Institute, Inc.; United States District Court for the Northern District of Illinois; judgment for \$2,500 entered May 26, 1943, against American Television Institute, Inc.; case dismissed with prejudice as to defendant U. A. Sanabria.

The Commission had ordered American Television Institute, Inc., its officers, etc., in connection with offer, etc., of their correspondence course of study and instruction in radio and television and in the sale and distribution of equipment for radio and television in interstate commerce or in the District of Columbia, to cease and desist from:

1. Representing in any manner that a limited number of persons are to be selected and trained for positions in radio television.

2. Representing in any manner that students are trained at respondents' expense.

3. Representing in any manner that anyone other than the student himself pays for his course of training.

4. Representing through advertisements in classified advertising pages of newspapers, magazines, advertising literature, or in any

⁵ Docket 3017, April 3, 1939, 28 F. T. C. 1341, 1350.

⁶ Docket 3334, April 18, 1943, 26 F. T. C. 1130, 1136.

other manner under such headings as "Help Wanted" or "Men Wanted" or in any other manner that respondents are offering employment or that employment will be offered to persons who answer said advertisements.

5. Representing that all or any part of the tuition fee for the course of instruction is deferred until a television job is secured.

6. Representing that respondents operate a widespread employment agency or that students are placed in paying positions upon graduation.

7. Representing that there is a shortage of radio television operators.

8. Representing that they operate radio television broadcasting stations.

9. Representing in any manner that their place of business is larger or that they have greater business facilities than actually is the case.

10. Representing that any of said respondents or their agents, servants, or employees are engineers of television broadcasting stations.⁷

⁷ Docket 3060, April 20, 1938, 26 F. T. C. 1138, 1145.

TABLE OF COMMODITIES¹

DESIST ORDERS

	Page
Acetphenetidin containing preparation.....	195
Advertising film service.....	207
Alloy resistance wire, electrical.....	336
"Alpacuna" overcoats and topcoats.....	563
Anti-freeze solution for automobile radiators, "60 Below".....	942
Aprons, linen.....	382
"Army":	
Goods.....	470
"Hi-Top Shoes".....	470
"Rejects".....	470
"Atmoray" electric ozone generator.....	457
Automobile tires, recapped.....	232
Automotive device, mechanical auxiliary.....	552
"Avocado Type Creme Nocturne".....	685
Baby chicks.....	421
Beer.....	577
"Binche" laces.....	142
Blankets.....	250, 470
"Army".....	470
Books, scientific.....	764
Bottle caps, Closure milk.....	841
Boxes, garment.....	488
Bulbs, small glass incandescent electric light.....	749
Caffeine preparation.....	933
Cameras.....	738
Candy.....	18, 575, 885
Caps, closure milk bottle.....	841
Cards:	
Post.....	612
Printed mailing.....	520
Carpets.....	446
"Carrot Type Cleansing Cream".....	685
"Cattle ManAmar" livestock feed.....	541
Chamois skin products.....	202
"Chen Yu Nail Lacquer".....	756
Chewing gum.....	822
Chicks, baby.....	421
Chinaware.....	738
Cigarette lighters.....	659
Cigarettes.....	282
Cigars.....	477

¹ Covering cease and desist orders and, at p. 1181, stipulations embraced in instant volume.

DESIST ORDERS

	Page
Civil Service examinations, correspondence courses for.....	215
Cleansing cream.....	685
Clocks.....	250, 738
Closure milk bottle caps.....	841
Clothing, men's.....	105, 470, 482, 563, 835
"Club Plan" men's wearing apparel.....	835
"Cluny" laces.....	142
Coats, linen.....	382
Collection agency cards, forms and questionnaires... 132, 148, 520, 594, 612, 721	721
Cones, ice cream.....	98, 950
Correspondence courses:	
Civil Service examinations.....	215
Spanish.....	1
Cosmetics and cosmetic preparations.....	685, 738, 905, 911
Cream, Vitamin D skin.....	911
"Creme Nocturne, Avocado Type".....	685
Cups, paper and ice cream.....	125
"Custom Built" furniture.....	162
"Decarbonizer and Vaporizer" mechanical auxiliary automotive device...	552
"Detoxifier, Gordon".....	626
"Diamond Ring".....	226
"Diathermy device, Domestic Short-Wave".....	920
Display service.....	957
Dolls.....	738
"Domestic Short-Wave Diathermy" device.....	920
Dorothy Gray cosmetics.....	911
Dresses.....	76
"Dura-Tone" rings.....	307
Electrical alloy resistance wire.....	336
Electrical appliances.....	659
Electrical "Magnetic Ray" device.....	866
Electric fence controllers.....	587
Electric light bulbs, small glass incandescent.....	749
"Electro Magnetic Nerve Vitalizer".....	315
Enlargements, photographic.....	260, 365, 892, 977
Envelopes.....	132, 148, 594, 721
Feeds, poultry and livestock.....	541
Felt rugs.....	651
Feminine hygiene preparations and appliances.....	504
Fence controllers, electric.....	587
"Fernet-Branca" medicinal preparation.....	875
Films, commercial motion picture.....	957
Film service, advertising.....	207
"Finishing Cream, Turtle Oil Type".....	685
Fire-extinguishing apparatus, "Lux" carbon dioxide.....	431
"Flat Venise" laces.....	142
Food:	
Mixtures.....	659
Products.....	118
Supplement.....	170
Footstones, marble and granite.....	180

DESIST ORDERS

	Page
Forms, letters and questionnaires.....	132, 148, 594, 721
Frames, photographic.....	365, 977
"French Tang Vanilla Flavor".....	118
Frocks, linen.....	382
Fruit trees.....	273
Fur garments.....	325
Furniture, household.....	162
Garment boxes.....	488
"Garment, Hollywood Magic".....	110
Glassware.....	659
"Goldtone Miniatures and portraits".....	260, 892
"Gordon Detoxifier".....	626
Government "rejects".....	470
"Grand Rapids" furniture.....	162
Granite and marble monuments, tombstones and footstones.....	180
Gum, chewing.....	822
"Hand Lotion, Honey and Almond Type".....	685
"Herb Tonic, Pow-A-Tan".....	531
"Hollywood" cosmetics.....	685
"Hollywood Magic Garment".....	110
"Honey and Almond Type, Hand Lotion".....	685
Hosiery.....	76
Household furniture.....	162
Ice cream cones.....	98, 950
Ice cream cups.....	125
Japanese light bulbs.....	749
Jewelry.....	226, 307, 331
"Journal of Living" publication.....	170
"Karastan" rugs.....	411
"Kola Astier" medicinal preparation.....	933
Laces.....	142
Lamps, electric.....	738
"Latta Cream" cosmetic.....	905
Letters, form.....	148, 594, 721
Linen goods and supplies.....	142, 382
Lingerie.....	76
Livestock feeds.....	541
Luggage.....	659
"Lux" carbon dioxide fire-extinguishing apparatus.....	431
Magazine sections for periodicals and catalogues, rotogravure printing of.....	773
Magazine subscriptions.....	764
"Magic Garment, Hollywood".....	110
"Magic Remedy" medicinal preparation.....	696
"Magnetic Ray" electrical device.....	866
Mailing cards, printed.....	520
"Malaria Chill Tonic and Laxative, Nash's C. & L.".....	668
"ManAmar" livestock feed.....	541
Manicure sets.....	738
Marble and granite monuments, tombstones and footstones.....	180
Mattresses.....	470, 830
"Army".....	470
"McNeil's Magic Remedy" medicinal preparation.....	696

DESIST ORDERS

	Page
Medicinal preparations.....	195, 300, 504, 668, 696, 707, 875, 933
Milk bottle caps, closure.....	841
Miniatures, "Goldtone".....	260, 892
Monuments.....	90, 180, 188
"Moss peat".....	996
Motion picture films, commercial.....	957
Motor oils, reclaimed.....	402
"Nail Lacquer, Chen Yu".....	756
"Nash's C. & L. Malaria Chill Tonic and Laxative".....	668
Novelties.....	226
Nursery products.....	273
Oil, used motor.....	402
"Our Lady of the Miraculous Medal" pendants.....	331
Overcoats, men's.....	563
Ozone generator, "Atmoray" electric.....	457
"Paintings".....	260, 977
Paints and paint products.....	25
Paper cups.....	125
"Para-Penn Motor Oil".....	402
"Parmak Electric Fencers".....	587
"Peat moss".....	996
Pen and pencil sets.....	659
Pendants, "Our Lady of the Miraculous Medal".....	331
"Pennsylvania" motor oils.....	402
Perfumes.....	289
Photographs.....	892
Tinted or colored enlargements of.....	260, 365, 977
Pictures.....	738
"Portraits".....	260
Post cards.....	612
Poultry feeds.....	541
"Pow-A-Tan Herb Tonic".....	531
Printing of magazine sections for periodicals and catalogues, rotogravure.....	773
"Protex-U" feminine hygiene preparation.....	504
Publication.....	170
Questionnaire forms.....	132, 148, 594, 721
Radios.....	659
"Railroad Watches".....	245
Recapped automobile tires.....	232
Reclaimed motor oils.....	402
Reducing devices.....	110
"Rejects," Army or Government.....	470
Rings:	
"Diamond".....	226
"Dura-Tone".....	307
School class.....	307
Rope, wire.....	790
Rotogravure printing of magazine sections for periodicals and catalogues.....	773
Rubber stamps.....	640
Rugs.....	411, 446, 651
"Sal Hepatica" laxative.....	707
"Sal-Ro-Cin" medicinal preparation.....	195

STIPULATIONS

	Page
School class rings.....	307
Shirts.....	76
Shoes, "Army".....	470
Silverware.....	659, 738
"60 Below" anti-freeze solution for automobile radiators.....	942
Smoking supplies.....	282
Snapshots.....	365, 977
Spanish correspondence courses.....	1
"Special Toning Oil".....	911
Sponge products.....	202
Stamps, rubber.....	640
"Stransky Vaporizer" mechanical auxiliary automotive device.....	552
"Stuart's Laxative Compound Tablets".....	300
Suits of clothes, men's.....	835
"Sun-Cu-Nilla" flavoring.....	118
"Superlube Motor Oil".....	402
"Surete" feminine hygiene preparation.....	504
Tablecloths, linen.....	382
Tableware.....	250
Tarpaulins.....	470
Tires, recapped automobile.....	232
Tobacco.....	282
Tombstones.....	90, 180, 188
Topcoats, men's.....	563
Trees, fruit.....	273
Trousers, linen.....	382
"Turtle Oil Type, Finishing Cream".....	685
"Tuscany" laces.....	142
"Valenciennes" laces.....	142
"Vanilla Flavoring".....	118
"Vaporizer and decarbonizer" mechanical auxiliary automotive device.....	552
"VBev" preparation.....	170
"Venise Rounds" laces.....	142
"Vibrator, Electro Magnetic".....	315
Vitamin D skin cream.....	911
Vitamin supplement.....	170
Wallets.....	738
Watches.....	245, 738
Wearing apparel.....	76, 835
"White Label" beer.....	577
Wire, electrical alloy resistance.....	336
Wire rope.....	790

STIPULATIONS¹

Acidophilus Culture, Needee.....	1091 (03104)
"Acidox" poultry remedy.....	1091 (03105)
"Active Laxative Tablets".....	1085 (03092)
"Ajax Staplers and Staples".....	1024 (3617)
"Angora" knitting yarn.....	1038
Anti-freeze solution for automobiles.....	1011

¹ Page references to stipulations of the radio and periodical division are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number, e. g., "01", "02", etc.

STIPULATIONS

	Page
"Arabakurl" coats.....	1039, 1041 (3636)
"Artic-Kurl" coats.....	1039
Artificial limbs.....	1042, 1044
Astrological forecasts.....	1085 (03093)
Automobile:	
Motors.....	1076
Tires and tubes.....	1055
"Avalon" cigarettes.....	1099
Aviation home study courses.....	1071
Bath cabinet.....	1097
"Bench-made":	
Clothing.....	1035 (3632)
Shoes.....	1010 (3602), 1052
"Bevill's Lotion and Corn Remedy".....	1070
Billfolds.....	1057 (3654)
"Blackstone Hair Coloring".....	1088 (03097)
Blankets.....	1026
"Blis-To-Sol" medicinal preparation.....	1096 (03115)
"Bokahara" coats.....	1041 (3636)
"Book No. 4".....	1083
Books.....	1061, 1095 (03112)
"Brains Boiled Down" publication.....	1092 (03106)
"Breosan Suppositories", etc.....	1081 (03088)
"Bristle and horsehair" paint brushes.....	1059 (3655)
"British Brogue" shoes.....	1010 (3602)
"British" sauce.....	1028 (3622)
Bromide containing preparations.....	1059 (3656)
Brushes, paint.....	1059 (3655)
Buttons.....	1015 (3610)
"Horn".....	1015 (3610)
"Ivory".....	1015 (3610)
"Official U. S. Army".....	1015 (3610)
Camera cases.....	1096 (03117)
Cameras.....	1078, 1096 (03117)
"Cameron" clothing.....	1035 (3632)
Candy.....	1046 (3641)
"Canterbury" Knitting yarn.....	1038
Canvas coverings.....	1063-1065 (3662)
Caps, electrically heated scalp.....	1030
Carbon arc type "Sun lamps".....	1069 (3669)
"Cashmere" knitting yarn.....	1038
"Cashmirdown" knitting yarn.....	1038
"C-rate" medicinal preparation.....	1083
"Chantilly" knitting yarn.....	1038
Charms, lucky.....	1085 (03093)
Chick mash.....	1093 (03110)
Chicks.....	1072 (3674)
"Chikovac" food preparation.....	1046 (3642)
Chinese medicinal preparations.....	1041 (3637)
"Chinese Wash".....	1085 (03093)
Cigarettes.....	1099
"Cinex-V" camera.....	1078
"Circuit Master" devices.....	1029

STIPULATIONS

	Page
"Cleanette".....	1066
"Clock, The Morse Tape".....	1008 (3597, 3598)
Clothing:	
Men's.....	1035 (3632)
Military.....	1028 (3623)
Coal tar hair dye product.....	1086 (03095)
Coats:	
Fur.....	1068 (3666)
Women's.....	1039, 1041 (3636)
"Color Camera".....	1078
"Colorundum" waterproofing and dampproofing material.....	1033
"Commanding Incense".....	1085 (03093)
"Compelling Oil".....	1085 (03093)
"Complete Guide for the Deafened".....	1095 (03112)
Contraceptive preparation.....	1089 (03099)
"Corn remedy".....	1070
Cosmetics and cosmetic preparations.....	1053, 1075, 1089 (03100), 1093 (03109)
Courses of instruction in aviation.....	1071
Crack repair preparation for motors.....	1007 (3596)
"Cravenette" fabric treatment.....	1035 (3630)
"Crepe".....	1020, 1021, 1022 (3614)
"Cross & Blackwell Worcestershire Sauce".....	1028 (3622)
Crystal set radio.....	1068 (3667)
"Customized" shoes.....	1052
"Custom made":	
Clothing.....	1035 (3632)
Men's shirts.....	1067 (3665)
Shoes.....	1010 (3602)
Dampproofing materials.....	1033
"Deafened, Complete Guide for the".....	1095 (03112)
"Dehydratine" waterproofing and dampproofing material.....	1033
"Diamond rings":	
"Facsimile".....	1075
"Replica".....	1034
"Diamonds".....	1075
Diet.....	1085 (03092)
Diet method.....	1098 (03119)
Diplomas.....	1025
"Dr. Caldwell's laxative Senna", etc.....	1090 (03102)
Dresses.....	1020
Children's.....	1021, 1022 (3614, 3615)
Drugs and drug preparations.....	1075, 1091 (03104)
Eczema medicinal preparation.....	1096 (03115)
Electrical devices.....	1074
Engine parts.....	1076
"English" sauce.....	1028 (3622)
Epilepsy medicinal preparation.....	1059 (3656)
Eye preparation.....	1093 (03109)
Fabric:	
Compound or preparation.....	1035 (3630)
Remnants.....	1024 (3618)
Fabrics, textile.....	1020, 1021, 1022 (3614, 3615), 1032
Face device.....	1095 (03114)

STIPULATIONS

	Page
Facial masks, electrically heated.....	1030
"Facsimile diamond ring".....	1075
"FaSet" face and neck device.....	1095 (03114)
Feathers.....	1050 (3646)
Feminine hygiene preparations.....	1081 (03088), 1089 (03099)
"Ferro-Fax" waterproofing and dampproofing material.....	1033
Fig trees.....	1073
Fingernail preparation.....	1056
Food:	
Preparations.....	1046 (3642)
Pulverizer.....	1016
Forecasts, astrological.....	1085 (03093)
"Formula":	
"Book".....	1092 (03106)
"Gas Saver".....	1096 (03116)
"301".....	1053
Formulas.....	1082
Fountain pens.....	1057 (3654)
"4 Fold" men's neckwear.....	1057 (3653)
"14-K Finish".....	1034
"14-K Gold Plated".....	1034
"14-KT Gold".....	1075
"14-Kt. Gold Finish".....	1034
"French":	
Crepes.....	1021
Perfumes.....	1012
Fruit and vegetable pulverizer.....	1016
"Fur" coats.....	1039, 1041 (3636), 1068 (3666)
Furniture.....	1049 (3643)
"Gas Saver Formula".....	1096 (03116)
"Gems, Replica".....	1034
"Germozone" poultry remedy.....	1091 (03105)
"Gly-Cas" medicinal preparation.....	1095 (03113)
"Gold":	
Alloy covering.....	1034
Lace.....	1028 (3623)
Products.....	1028 (3623)
Hair preparations or devices.....	1037, 1094
Coal tar dye.....	1086 (03095), 1088 (03097)
Oil.....	1088 (03098)
"Hairtone" scalp and hair preparations.....	1037
"Hand made" shoes.....	1052
"Hand tooled" billfolds.....	1057 (3654)
"Handy Radio".....	1068 (3667)
"Hanger" limbs.....	1042, 1044
Head-Hold Spine Stretch Harness.....	1083
"High-speed" camera.....	1078
"Hollannaise" sauce.....	1010 (3601)
"Hollywood Liquefier".....	1016
Home study courses in aviation.....	1071
"Horn" buttons.....	1015 (3610)
Horse remedy.....	1093 (03108)

STIPULATIONS

	Page
"Hydratite" waterproofing and dampproofing material.....	1033
Ignition devices.....	1029
Incense.....	1085 (03093)
"Infra-Red Beauty Mask and Scalp Cap".....	1030
Infrared bulb lamps.....	1074
"Ivory" buttons.....	1015 (3610)
Jewelry.....	1075
Novelty.....	1034
Products.....	1014
Jewel tip phonograph needles.....	1049 (3644)
Jinx-breaking powder.....	1085 (03093)
"Kacti" phonograph needles.....	1067 (3664)
"Kay Special Sulphur Skin Soap".....	1053
"Kerrys" clothing.....	1035 (3632)
"Kil-Balm Rat and Mouse Exterminator".....	1027
"King Fig" trees.....	1073
Knitting yarns.....	1038
"Knomark White Shoe Dressing".....	1091 (03103)
"Kovac" food preparation.....	1046 (3642)
"Krank's Hair Oil".....	1088 (03098)
"Krimmer" coats.....	1039
"Kurlymo" coats.....	1039
Lactone, Needee.....	1091 (03104)
"Lak Plus" medicinal preparation.....	1086 (03094)
Lamps, ultraviolet sun.....	1069 (3669), 1074
Languagephone method of language teaching.....	1069 (3668)
"Lanolin, Breosan".....	1081 (03088)
Laxative containing preparations.....	1059 (3656)
"Laxative Tablet".....	1085 (03092)
"Laxo Method" of reducing.....	1098 (03119)
Leak-repair preparation for motors.....	1007 (3596)
"Leather" billfolds.....	1057 (3654)
"Lecithin Capsules, Thomar".....	1090 (03101)
"Liquefier, Hollywood".....	1016
"Linen" towels or products.....	1009 (3600)
"Lloyd" shoes.....	1052
"Lloyds, Ltd." shoes.....	1010 (3602)
"London Boot Shop" shoes.....	1052
"London" sauce.....	1028 (3622)
Lotion, skin.....	1070
Love inducing device.....	1085 (03093)
Luck inducing device.....	1085 (03093)
Lucky charms.....	1085 (03093)
Luggage.....	1015 (3609)
Magic Powder.....	1085 (03093)
Mascara.....	1093 (03109)
Masks, electrically heated facial.....	1030
Meat pulverizer.....	1016
"Me-Ba" medicinal preparation.....	1087
Mechanical devices.....	1074
Mechanics, home study courses in.....	1071

STIPULATIONS

	Page
Medicinal preparations.....	1041 (3637), 1079, 1081 (03088), 1083, 1086 (03094), 1087, 1089 (03099), 1090 (03101, 03102), 1091 (03104), 1092 (03107), 1095 (03113), 1096 (03115), 1098 (03120).
Memorials, granite.....	1007 (3409)
"Metalon" waterproofing and dampproofing material.....	1033
"Mild Laxative Tablets".....	1085 (03092)
Military clothing and accessories.....	1028 (3623)
"Milkmaid" cosmetics.....	1089 (03100)
Mineralized water.....	1023
"Min-O-Ral" mineralized water.....	1023
"Modern Eyes Mascara".....	1093 (03109)
"Monarck Color Camera".....	1096 (03117)
Monuments, granite.....	1007 (3409)
"Morse Tape Clock, The".....	1008 (3597, 3598)
"Moth Preventative".....	1066
Motor repair preparation.....	1007 (3596)
Motors, automobile.....	1076
Mouse exterminator.....	1027
Neck device.....	1095 (03114)
Neckwear.....	1057 (3653)
"Rayon".....	1013 (3606)
"Wool".....	1013 (3606)
Needee Acidophilus Culture, etc.....	1091 (03104)
Needles, phonograph.....	1049 (3644), 1067 (3664)
"No-Freeze" solution for automobiles.....	1011
"Normal Week Diet".....	1085 (03092)
"Norway" knitting yarn.....	1038
Novelty jewelry.....	1034
"Nutrena Egg Mash", etc.....	1093 (03110)
"Nu Yorker' Infra-Red Beauty Mask and Infra-Red Scalp Cap".....	1030
"Official U. S. Army" buttons.....	1015 (3610)
Oil:	
Compelling.....	1085 (03093)
Hair.....	1088 (03098)
"Ointment, Breosan".....	1081 (03088)
Overcoats, men's.....	1035 (3632)
Paint brushes.....	1059 (3655)
Paints.....	1077
"Papaya Dyjestin".....	1046 (3642)
"Paris" perfumes.....	1012
Patriotic stamp.....	1057 (3654)
Pens, fountain.....	1057 (3654)
Perfumes.....	1085 (03093)
"French".....	1012
"Paris".....	1012
"Persian" coats.....	1039, 1041 (3636)
"Persian" fur coats.....	1068 (3666)
"Persian" knitting yarn.....	1038
"Persian lamb" fur coats.....	1068 (3666)
Petroleum distillate.....	1066

STIPULATIONS

	Page
Phenobarbital containing preparations.....	1059 (3656)
Phonograph needles.....	1049 (3644), 1067 (3664)
Plans, weight reduction.....	1085 (03092)
Poison oak medicinal preparation.....	1096 (03115)
"Polanka" medicinal preparation.....	1079
"Polarkurl" coats.....	1039
Poultry:	
Feed preparations.....	1093 (03110)
Remedies.....	1091 (03105)
Powder, Jinx-breaking and magic.....	1085 (03093)
Publications.....	1061, 1092 (03106)
"Quinine Hairetone".....	1037
Radio device.....	1081 (03089)
Radios.....	1068 (3667)
Rat exterminator.....	1027
Rayon products.....	1020,
1021, 1022 (3614), 1024 (3618), 1026, 1032, 1039, 1057 (3653)	
Neckwear.....	1013 (3606)
Reducing method or preparation.....	1098 (03119)
"Regal Color Camera".....	1096 (03117)
"Regina" coal tar hair dye product.....	1086 (03095)
Remnants, fabric.....	1024 (3618)
"Replica Diamond Rings".....	1034
Rice.....	1072 (3672)
"Rings, Replica Diamond".....	1034
"Rochester" clothing.....	1035 (3632)
"R-Q" medicinal preparation.....	1098 (03120)
"Satin".....	1026, 1039
"Savoss" horse remedy.....	1093 (03108)
"Saxony" knitting yarn.....	1038
Scalp devices or preparations.....	1037, 1094
Caps, electrically heated.....	1030
School annuals.....	1072 (3673)
"Scal-Cote" fingernail preparation.....	1056
Security suppositories.....	1089 (03099)
Senna preparation.....	1090 (03102)
"Serature" wound clips.....	1013 (3605)
"Shantungs".....	1020, 1022 (3615)
"Shetland":	
Clothing.....	1035 (3632)
Knitting yarn.....	1038
"Shetlandown" knitting yarn.....	1038
"Shiraz lamb" fur coats.....	1068 (3666)
Shirts, men's.....	1067 (3665)
Shoe dressings.....	1091 (03103)
Shoes.....	1050 (3645), 1052
"Bench made".....	1010 (3602)
"British Brogue".....	1010 (3602)
"Custom".....	1010 (3602)
"Lloyds, Ltd.".....	1010 (3602)
"Silk".....	1020, 1021, 1022 (3614, 3615), 1024 (3618), 1026, 1039
"Silver-Ply Stainless Clad Steel".....	1035 (3631)

STIPULATIONS

	Page
"Si-Oze" medicinal preparation.....	1092 (03107)
Skin medicinal preparation.....	1098 (03120)
"Smyrna" knitting yarn.....	1038
"Soap, Kay Special Sulphur Skin".....	1053
"Spanish" knitting yarn.....	1038
Spark plug devices.....	1029
"Spick White Shoe Cleaner".....	1091 (03103)
"Spine-Stretch Harness, Head-Hold".....	1083
"Stainless Clad Steel".....	1035 (3631)
Stamp, patriotic.....	1057 (3654)
Staplers.....	1024 (3617)
Staples.....	1024 (3617)
Stapling machines.....	1051 (3647)
Steel products.....	1035 (3631), 1041 (3638)
Stillman's suppositories.....	1089 (03099)
Stock remedy.....	1093 (03108)
"Stratford" knitting yarn.....	1038
"Success" publication.....	1085 (03093)
Suits, men's.....	1035 (3632)
"Sun lamps".....	1069 (3669)
"Ultraviolet".....	1074
"Superior Bath Cabinet".....	1097
"Super-Spark" devices.....	1029
"Supertan Ultra-Violet Ray Sun Lamps".....	1069 (3669)
"Suppositories":	
"Breosan".....	1081 (03088)
Security.....	1089 (03099)
Surgical supplies.....	1013 (3605)
"Taffeta".....	1020, 1022 (3614), 1039
Tarpaulins.....	1063 - 1065 (3662)
Textile fabrics.....	1020, 1021, 1022 (3614, 3615), 1032
Textile products "Linen".....	1009 (3600)
"Thomar Lecithin Capsules".....	1090 (03101)
"3 in 1 Radio Tuner".....	1081 (03089)
Thyroid extract containing preparations.....	1059 (3656)
Tires, automobile.....	1055
"Tissue Food Tablets A and B".....	1083
Topcoats, men's.....	1035 (3632)
Towels, "Linen".....	1009 (3600)
"Trade-ins" watches.....	1014
Trophies.....	1009 (3599)
Trusses.....	1031
Tubes, automobile.....	1055
"Turkey Starting Mash".....	1093 (03110)
"Tweed".....	1039
Ultraviolet sun lamps.....	1074
"Uncrossing Incense".....	1085 (03093)
Used products.....	1050 (3646)
Watches.....	1014
Vegetable and fruit pulverizer.....	1016
"Velvet".....	1020, 1022 (3614)
"Verified value" clothing.....	1035 (3632)

STIPULATIONS

	Page
"Vita-brush" hair and scalp device.....	1094
Vitamin capsules.....	1051 (3648)
"Vitamin D" preparations.....	1090 (03101)
"Vita-Pneumatic Action" trusses.....	1031
"Walco" sapphire phonograph needles.....	1049 (3644)
Watches, used.....	1014
Waterproofing materials.....	1033
Weight reduction plan.....	1085 (03092)
"Weldex" crack repair preparation for motors.....	1007 (3596)
"Wool" neckwear.....	1013 (3606)
Worcestershire sauce.....	1028 (3622)
Wound clips.....	1013 (3605)
Yarns, knitting.....	1038
Yearbooks.....	1061, 1072 (3673)
"Yorkshire" knitting yarn.....	1038
"Zielanka" medicinal preparation.....	1079
Zinc phosphide containing preparations.....	1059 (3656)

INDEX ¹

DESIST ORDERS

	Page
Accumulating orders to earn quantity discounts. (<i>See Discriminating in price</i>).....	25
Accuracy of product, misrepresenting as to. (<i>See Advertising falsely, etc.</i>)..	245
Acts, unfair or deceptive, condemned in this volume. (<i>See Unfair methods, etc.</i>)	
Advertising copy, furnishing false and misleading. (<i>See Furnishing, etc.</i>)..	563
Advertising falsely or misleadingly:	
As to—	
Agents or representatives—	
Earnings or profits.....	76
Opportunities.....	273
Qualifications.....	504
Terms and conditions.....	738
Ailments and symptoms, generally.....	626, 668
Bond.....	180
"Gold Bond".....	188
Business status, advantages or connections—	
Branch offices.....	207
Foreign cities.....	289
British Royal Warrant holders.....	282
"Certification" of diplomas.....	1
Collection agency being—	
Sales agency.....	612
Transportation concern.....	612
Commercial corporation being non-profit health organization..	504
Connections or arrangements with others—	
Decedents' estates.....	132, 148, 721
Foreign concerns.....	282
Nationally advertised manufacturers.....	207
Newspapers.....	892
U. S. Poultry Improvement Association.....	421
Well-known concern.....	651
Correspondence school being—	
Institute.....	215
University.....	1
Dealer being—	
Manufacturer or producer.....	162, 180, 207, 207, 325, 331
Direct dealing advantages.....	162
Foreign—	
Branches.....	289, 594
Connections and arrangements.....	282
Status.....	282, 289

¹ Covering practices included in cease and desist orders, and stipulations, at p. 1211, in instant volume. For index by commodities involved rather than practices, *see* Table of Commodities, preceding.

DESIST ORDERS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Business status, advantages or connections—Continued.

Government—	Page
Connection.....	520
Recognition.....	1
Source of product.....	470
History.....	431
Individual being institute.....	1
Indorsement, approval or sponsorship—	
British Royal House.....	282
U. S. Public Health Service.....	504
Location.....	594
Nature of business.....	504, 520, 594, 612, 721, 773, 892
Personnel or staff.....	504
Photographer being news service.....	892
Private business being artists' association.....	365
Processor being refiner.....	402
Properties and rights.....	90
Reputation, success or standing.....	1, 282, 431
Correspondence school degrees as recognized by universities.....	1
Government recognition.....	1
Retail store being "factory show-room".....	162
Size and extent.....	207, 307
By depictions.....	307
Stock.....	325, 470
Unique nature of business.....	273
Comparative data or merits.....	76,
	90, 431, 482, 541, 696, 866, 920, 942
Competitors and their products.....	76, 431
Composition of product.....	90,
	105, 118, 226, 282, 307, 325, 331, 402, 563, 651, 685
Condition of product.....	470
Domestic product being imported.....	289, 446, 563, 756
Earnings or profits.....	76
Exhibits.....	892
Foreign product being "Made in U. S. A.".....	749
Free product or samples—	
Price of which included in charge or service otherwise demanded.....	76, 226, 552, 738
Free test or trial.....	552
Government—	
Approval or indorsement.....	180, 421
Connection.....	520
Source.....	470
Specifications.....	470
Guarantees.....	180, 188, 232
History of product.....	325, 421, 470, 663, 756, 892
Indorsement, sponsorship or approval of product—	
Consumers' research bodies.....	482

DESIST ORDERS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Page

Indorsement, sponsorship or approval of product—Continued.

Government.....	180, 421
Physicians and health officials.....	668
Teachers.....	668
U. S. Public Health Service.....	504
University and industrial laboratories.....	942

Jobs and employment—

Government.....	215
-----------------	-----

Law conformance—

Postal laws.....	180
------------------	-----

Manufacture or preparation of product... 76, 90, 232, 307, 325, 470, 892

By depictions.....	76
"Custom Built".....	162
"Hand-made".....	105
Reproductions.....	446

Nature of product..... 118, 170, 226, 245, 331, 402, 531, 773, 892, 996

By depictions.....	245
--------------------	-----

Old, used or reclaimed product being new..... 402, 470

Opportunities in product or service..... 215, 273, 773

Postal laws conformance..... 180

Prices of product..... 90, 162, 260, 531, 577, 830, 892

Qualities, properties or results of product—

Accuracy, dependability, etc.....	245
Analgesic.....	696
Anti-freeze.....	942
Antiseptic or germicidal.....	457, 504, 541
Auxiliary, improving and supplementary.....	170, 552
Cleansing.....	911
Contraceptive.....	504
Cosmetic, toilet and beautifying.....	685, 905, 911
Durability or permanence.....	76, 180, 188, 232, 756
Economizing or saving.....	552, 587
Functional effectiveness, operation and scope, in general..	315, 587
Medicinal, therapeutic, remedial and healthful.....	170, 315,
457, 504, 531, 541, 626, 668, 696, 707, 866, 875, 920, 933	
Non-corrosive.....	942
Preventive or protective.....	315, 541, 668, 875, 911
Reducing.....	110
Simplicity, usability, etc.....	504
Snag and run-proof.....	76
Stainless.....	188
Style, design, etc.....	325

Quality of product..... 226, 232, 245, 482

By depictions.....	245
--------------------	-----

Quantity..... 577

Reproductions..... 325, 446

Safety of product..... 110, 195, 300, 457, 504, 668, 920, 942

Sample, offer or order conformance..... 90, 232

By depictions.....	76
--------------------	----

Scientific or relevant facts..... 215, 626, 668

DESIST ORDERS

Page

Advertising falsely or misleadingly—Continued.

As to—Continued.

Source or origin of product—

Place.....	90, 162, 402, 685
Domestic being foreign.....	232, 756
By depictions.....	756
Foreign as domestic.....	749
Foreign, in general.....	142, 289, 446, 563
Raw materials.....	651
Special or limited offers.....	260, 531
Specifications or standards conformance—	
Government.....	470
Success, use or standing.....	482, 773, 905
Motion picture stars.....	685
Terms and conditions.....	76, 180, 188, 207, 232, 738, 892
Testimonials.....	457, 668
Tests.....	232, 421
Consumers' research bodies.....	482
U. S. Bureau of Standards.....	942
Undertakings, in general.....	207
Unique nature or advantages of product.....	76,
	105, 273, 431, 482, 541, 942
Unique source of product.....	470
Weight of product.....	180

Agents or representatives:

Earnings or profits, misrepresenting as to. (<i>See Advertising falsely, etc.; Securing agents, etc.</i>).....	76
Qualifications, misrepresenting as to. (<i>See Misrepresenting directly, etc.</i>).....	504
Securing falsely or misleadingly. (<i>See Advertising falsely, etc.; Securing agents, etc.</i>).....	76, 738
Terms and conditions, misrepresenting as to. (<i>See Advertising falsely, etc.</i>).....	738

Aiding, assisting, or abetting unfair or unlawful act or practice:

(*See, also, Combining or conspiring; Furnishing, etc.; and, in general, Unfair methods, etc.*)

Through—

Acquiescing in salesmen's misrepresentations.....	260
Lending and employing own trade name and address in other's deceptive scheme.....	977
Mailing misleading questionnaire forms for collection agency associate.....	148, 520, 721
Selling lottery devices.....	125, 950
Sending collection agency cards as purported government requests for information.....	520
Serving as instrumentality for price fixing.....	336
Ailments or symptoms, misrepresenting as to. (<i>See Advertising falsely, etc.</i>).....	626, 668
Allowances for services and facilities, discriminating in price through. (<i>See Discriminating in price.</i>).....	477
Analgesic qualities of product, misrepresenting as to. (<i>See Advertising falsely, etc.</i>).....	696

DESIST ORDERS

	Page
"Annual Requirement Record", classifying dairies in. (See Combining or conspiring).....	841
Anti-freeze qualities of product, misrepresenting as to. (See Advertising falsely, etc.).....	942
Antiseptic or germicidal qualities of product, misrepresenting as to. (See Advertising falsely, etc.).....	457, 504, 541
"Art Studio", seller misrepresenting self as. (See Misrepresenting business status, etc.; Misrepresenting directly, etc.).....	977
Artists' association, private business misrepresenting self as. (See Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.).....	365
Auxiliary qualities of product, misrepresenting as to. (See Advertising falsely, etc.).....	170, 552
Assuming or using misleading trade or corporate name: As to—	
Commercial corporation being nonprofit health organization....	504
Connections or arrangements with others—	
Decedents' estates.....	132, 148, 721
Foreign concerns.....	282
Correspondence school being institute.....	215
Dealer being manufacturer.....	162
Domestic product being imported.....	289
Financial benefits obtainable.....	132
Foreign—	
Branches.....	594
Connections and arrangements.....	282
Status.....	282, 289
Government connection.....	520
Individual being institute.....	1
Location.....	594
Nature of business.....	132, 148, 504, 594, 612, 721, 892
Photographer being news service.....	892
Private business being artists' association.....	365
Processor being refiner.....	402
Source of product—	
Place—	
Foreign, in general.....	289
Bidding uniformly. (See Combining or conspiring.).....	336
Bogus independents, operating. (See Combining or conspiring.).....	382
Bond, misrepresenting as to. (See Advertising falsely, etc.; Offering deceptive, etc.).....	180, 188
Booking agency, using exclusive territorial, to monopolize screen display service. (See Combining or conspiring.).....	957
Branch offices, misrepresenting as to. (See Advertising falsely, etc.; Misrepresenting business status, etc.).....	207
British Royal House, misrepresenting indorsement by. (See Advertising falsely, etc.; Claiming or using, etc.; Misbranding, etc.; Misrepresenting business status, etc.).....	282
Bureau of Standards tests, misrepresenting as to. (See Advertising falsely, etc.).....	942
Business status, advantages or connections, misrepresenting as to. (See Advertising falsely, etc.; Misrepresenting business status, etc.; Misrepresenting directly, etc.)	

DESIST ORDERS

	Page
"Certification" of diplomas, misrepresenting as to. (<i>See Advertising falsely, etc.</i>).....	1
Claiming or using indorsements or testimonials falsely or misleadingly:	
As to or from—	
British Royal House.....	282
Consumers' research bodies.....	482
Educational authorities.....	1
Government.....	1, 180
National Poultry Improvement Plan.....	421
U. S. Public Health Service.....	504
Physicians and health officials.....	668
Teachers.....	668
University and industrial laboratories.....	942
Users, in general.....	457, 668
Cleansing qualities of product, misrepresenting as to. (<i>See Advertising falsely, etc.</i>).....	911
Coercing and intimidating:	
Competitors—	
To—	
Comply with price regulations.....	382
Discontinue business.....	488
Maintain prices and sales quotas.....	488
Customers—	
To—	
Pay unfounded "damages"—	
By threatened suit or other intimidation.....	651
Purchase product or service—	
By withholding customer property.....	260, 977
Purchase unordered product—	
By threatened suit or other intimidation.....	651
Manufacturers—	
To refuse to supply non-members.....	382
Collection agency cards, sending, as government requests for information. (<i>See Aiding, etc.</i>).....	520
Collection agency, misrepresenting as:	
Government. (<i>See Advertising falsely, etc.; Aiding, etc.; Misrepresenting business status, etc.</i>).....	520
Sales Agency. (<i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>).....	612
Transportation concern. (<i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>).....	612
Combining or conspiring:	
To—	
Fix prices and hinder competition—	
Through—	
Adhering to association ratings in determining contract prices.....	841
Admitting independents to membership only after indemnifying members for business taken from them..	382
Adopting uniform resistance standards.....	336
Allocating purchasers to certain association members..	488
Allocating quotas among members and penalizing violations thereof.....	488

DESIST ORDERS

Page

Combining or conspiring—Continued.

To—Continued.

Fix prices and hinder competition—Continued.

Through—Continued.

Auditing members' books to check reports of sales data, prices, etc.....	488
Changing government and base discounts concertedely.....	790
Checking filed sales data and inviting complaints of non-compliance, by association.....	841
Classifying dairies in "Annual Requirement Record".....	841
Collecting and disseminating members' sales data.....	488
Compiling standard rate book for members' use, by association.....	957
Exchanging price and discount information.....	336
Filing and using formula for discounts and net delivered prices.....	790
Filing lists of authorized distributors.....	790
Filing with association copies of invoices and contracts.....	841
Fixing and maintaining uniform prices, discounts, terms and conditions, etc.....	336, 382, 488, 790, 841
Holding meetings for interchange of price information.....	841
Limiting distributors to designated locations.....	790
Limiting purchases of jobbers and consumers.....	841
Maintaining disciplinary board to punish non-complying members.....	382
Operating bogus independent or "whips"—	
To discipline members.....	382
To take business from independents.....	382
Quoting and selling only on a delivered zone basis.....	790
Refraining from soliciting business from customers of other members.....	382
Refusing to—	
Assume state sales taxes.....	336
Sell to competitors' distributors.....	790
Sell to non-members of association.....	488
Reporting customers' names to trade association.....	382
Requiring customers to sign exclusive dealing contracts.....	382
Requiring substantial deposits to insure members' cooperation, by trade association.....	488
Submitting uniform bids.....	336
Using uniform list of classes of customers.....	790

Monopolize sale and distribution—

Through—

Compiling standard rate book for members' use, by association.....	957
Cutting off competitors' supplies or credit.....	382
Exclusive contracts with film exhibitors.....	957
Exclusive customer dealing arrangements.....	382
Exclusive territorial booking agencies.....	957
Executing uniform co-distributor agreements.....	957

DESIST ORDERS

Combining or conspiring—Continued.

To—Continued.

Page

Monopolize sale and distribution—Continued.

Through—Continued.

Fixing charges and terms for manufacturers, booking agencies and theaters.....	957
Operating "bogus independents" to take independents' business.....	382
Organizing and using exclusive booking agency.....	957
Organizing association and limiting membership to regular suppliers.....	957
Preventing sale to co-operative agencies.....	841
Purchasing business of price-cutting competitors.....	488
Reciprocal non-soliciting arrangements.....	382
Standardizing film advertising programs, by association.....	957
Comparative data or merits of product, misrepresenting as to. (See Advertising falsely, etc.).....	76, 90, 431, 482, 541, 696, 866, 920, 942
Competitors and their products, misrepresenting as to. (See Advertising falsely, etc.; Disparaging, etc.).....	76, 431
Composition of product, misrepresenting as to. (See Advertising falsely, etc.; Using misleading, etc.).....	90, 105, 118, 226, 282, 307, 325, 331, 402, 563, 651, 685
Concealing or obliterating foreign source marking.....	749
Condition of product, misrepresenting as to. (See Advertising falsely, etc.).....	470
Connections and arrangements with others, misrepresenting as to. See Advertising falsely, etc.; Misrepresenting business status, etc.	
Consumers' research bodies, claiming indorsements of falsely. (See Claiming or using, etc.).....	482
Contraceptive qualities of product, misrepresenting as to. (See Advertising falsely, etc.).....	504
Contracts, filing with association, in price fixing schemes. (See Combining or conspiring).....	841
Co-operative agencies, preventing sales to, in price fixing schemes. (See Combining or conspiring.).....	841
Copies, misrepresenting product as being. (See Advertising falsely, etc.)..	325
Correspondence school misrepresented as—	
Institute (See Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.).....	215
University (See Advertising falsely, etc.; Misrepresenting business status, etc.).....	1
Cosmetic qualities of product, misrepresenting as to. (See Advertising falsely, etc.).....	685, 905, 911
"Cost of production", misrepresenting price as. (See Misrepresenting prices).....	977
Cost-sharing with customers, misrepresenting as to. (See Advertising falsely, etc.; Offering deceptive, etc.).....	207
Coupon values, misrepresenting as to. (See Misrepresenting directly, etc.; Offering deceptive, etc.).....	260
Custom built, misrepresenting product as. (See Advertising falsely, etc.; Misbranding, etc.; Using misleading, etc.).....	162
Customer classification, uniform, as instrument in price fixing. (See Combining or conspiring).....	790

DESIST ORDERS

Cutting off competitors' access to customers:	
Through—	Page
Withholding supplies from competitors' customers.....	488
Cutting off competitors' sources of supply:	
Through—	
Coercing manufacturer suppliers.....	382
Dealer misrepresenting self as manufacturer. <i>See</i> Advertising, etc.;	
Assuming or using, etc.; Misrepresenting business status, etc.; Misrepre-	
sented directly, etc.	
Dealing on exclusive and tying basis:	
In violation of Section 5.....	382
Decedents' estates, misrepresenting connections with, by collection	
agency. (<i>See</i> Advertising falsely, etc.; Misrepresenting business	
status, etc.).....	132, 148, 721
Delinquent debtors, supplying false and misleading questionnaire forms	
for locating. (<i>See</i> Furnishing means, etc.).....	132, 148, 721
Delivered zone basis for price fixing. (<i>See</i> Combining or conspiring)....	790
Direct dealing advantages, misrepresenting as to. (<i>See</i> Advertising	
falsely, etc.; Misrepresenting business status, etc.; Misrepresenting	
directly, etc.).....	162
Disciplining non-complying members, in price fixing combination. (<i>See</i>	
Combining or conspiring).....	382
Discounts, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Mis-	
representing prices).....	90
Discriminating in price:	
In violation of Section 2, Clayton Act—	
Through—	
Accumulating orders over a period to earn quantity dis-	
counts.....	25
Allowances for services or facilities.....	477
Charges and price differentials generally.....	25, 640
Distributor discounts to retailers.....	25
Functional discounts on dealer's estimate of distributor	
business.....	25
Pooling chain store orders to earn quantity discounts.....	25
Warehouse rental and service allowances.....	25
Disparaging or misrepresenting competitors or their products:	
Competitors—	
As to—	
Facilities and stock.....	431
Prices.....	90
Time in business.....	431
Products—	
As to—	
Competitors' as same as.....	289
History.....	431
Manufacture or preparation.....	76
By depictions.....	76
Distributor discounts to retailers, discriminating in price through. (<i>See</i>	
Discriminating in price).....	25

DESIST ORDERS

Distributors, authorized, filing lists of in price fixing schemes. (See Combining or conspiring).....	Page 790
Distributors, limiting to designated locations in price fixing schemes. (See Combining or conspiring).....	790
Doctors, misrepresenting indorsement of product by. (See Advertising falsely, etc.; Claiming or using, etc.).....	668
Domestic product:	
Foreign, misrepresented as. (See Advertising falsely, etc.).....	749
Misrepresented as foreign. (See Advertising falsely, etc.; Misbranding, etc.; Using misleading, etc.).....	282, 756
Drawing contests, misrepresenting as to. (See Misrepresenting directly, etc.; Using contest schemes, etc.).....	365, 977
Durability of product, misrepresenting as to. (See Advertising falsely, etc.).....	76, 180, 188, 232, 756
Earnings or profits, misrepresenting as to. (See Advertising falsely, etc.; Offering deceptive, etc.; Securing agents, etc.).....	76
Economizing qualities of product, misrepresenting as to. (See Advertising falsely, etc.).....	552, 587
Educational authorities, claiming indorsement by, falsely. (See Claiming or using, etc.; Misrepresenting business status, etc.).....	1
Enforcing and exacting, wrongfully, customer dealing:	
Through—	
Making performance of paid obligation contingent on.....	260
Padding orders.....	651
Sellers' concealed control of needed additional product.....	365
Withholding customer property unfairly.....	977
Exchanging price information, by competitors. See Combining or conspiring.	
Exclusive dealing contracts, requiring customers to sign. (See Combining or conspiring).....	382
Exclusive dealing, in violation of Section 5. (See Dealing on exclusive.)..	382
Exhibitions, photographic, misrepresenting as to. (See Offering deceptive, etc.).....	892
Facilities and stock, misrepresenting as to competitors'. (See Disparaging, etc.).....	431
Factory show-room, retail store misrepresented as. (See Advertising falsely, etc.; Misrepresenting business status, etc.; Misrepresenting directly, etc.).....	162
Failure to reveal, unfairly or improperly. See Neglecting, etc.	
Financial benefits obtainable, misrepresenting as to. (See Assuming or using, etc.; Misrepresenting directly, etc.).....	132
Foreign:	
Connections, misrepresenting as to. (See Advertising falsely, etc.; Misrepresenting business status, etc.).....	282
Domestic product, misrepresented as. (See Advertising falsely, etc.; Misbranding etc.; Using misleading, etc.).....	756
Offices, misrepresenting as to. (See Advertising falsely, etc.; Misrepresenting business status, etc.).....	289, 594
Product, misrepresenting source of. (See Advertising falsely, etc.; Misbranding, etc.).....	142, 749
Source marking, concealing. (See Concealing, etc.).....	749
Status, misrepresenting as to. (See Advertising falsely, etc.; Assuming or using, etc.; Misbranding, etc.; Misrepresenting, etc.).....	282, 289

DESIST ORDERS

	Page
Formulas for price fixing, using. (<i>See</i> Combining or conspiring)-----	790
Free product, samples or service, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Offering deceptive, etc.; Securing agents, etc.)-----	76, 226, 738, 764
Free test or trial, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Offering deceptive, etc.)-----	552
Functional:	
Discounts, discriminating in price through. (<i>See</i> Discriminating in price)-----	25
Effectiveness of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)-----	315, 587
Furnishing means and instrumentalities of misrepresentation and deception:	
(<i>See, also</i> , Aiding, etc., and, <i>in general</i> , Unfair methods, etc.)	
Through supplying false and misleading—	
Advertising copy or matter-----	563
Collection agency cards as government requests for information--	520
Lists of own and competitive products, as purportedly identical--	289
Questionnaire forms, etc., to customers-----	132, 148, 594, 612, 721
Samples-----	232
Germicidal qualities of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)-----	457, 504, 541
"Gold Bond", misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Offering deceptive, etc.)-----	188
Government:	
Connection, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.)-----	520
Discounts, fixing and changing concertedly. (<i>See</i> Combining or conspiring)-----	790
Indorsement, claiming falsely. (<i>See</i> Claiming or using, etc.; Misrepresenting business status, etc.)-----	1, 180, 421, 504
Jobs and employment, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Offering deceptive, etc.)-----	215
Recognition, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.)-----	1
Source of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)-----	470
Specifications, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)-----	470
Guarantees, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Offering deceptive, etc.)-----	180, 188, 232
Hand-made, misrepresenting product as being. (<i>See</i> Advertising falsely, etc.)-----	105
"Hand painted", misrepresenting product as. (<i>See</i> Misrepresenting directly, etc.)-----	977
Health:	
Officials, misrepresenting indorsement of product by. (<i>See</i> Advertising, etc.; Claiming or using, etc.)-----	668
Organization, commercial corporation misrepresenting self as. (<i>See</i> Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.)-----	504
Healthful qualities of product, misrepresenting as to. <i>See</i> Advertising falsely, etc.	

DESIST ORDERS

History of:	Page
Business, misrepresenting as to. (<i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>)	431
Product, misrepresenting as to. (<i>See Advertising falsely, etc.</i>)	325
Imported or foreign, domestic product misrepresented as. (<i>See Advertising falsely, etc.; Misbranding, etc.; Using misleading, etc.</i>)	756
Indorsement or approval, claiming false and misleading. <i>See Advertising falsely, etc.; Claiming or using, etc.; Misbranding, etc.; Misrepresenting directly, etc.; Using misleading, etc.</i>	
Institute:	
Correspondence school misrepresented as. (<i>See Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.</i>)	215
Individual misrepresenting self as. (<i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>)	1
Intimidating competitors or customers. <i>See Coercing, etc.</i>	
Invoices, filing with association, in price fixing schemes. (<i>See Combining or conspiring</i>)	841
'Japan' stamp on imported product, concealing. (<i>See Advertising falsely, etc.; Concealing, etc.; Misbranding, etc.; Neglecting, etc.</i>)	749
Laboratories, claiming indorsement by, falsely. (<i>See Claiming or using, etc.</i>)	942
Law conformance, misrepresenting as to. (<i>See Advertising falsely, etc.</i>)	180
Limiting purchases of jobbers and consumers as means of concerted price fixing. (<i>See Combining or conspiring</i>)	841
Location of business, misrepresenting as to. (<i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>)	594
Lottery devices, selling unlawfully. <i>See Aiding, assisting, etc.</i>	
Lottery schemes in merchandising, using. <i>See Using lottery schemes, etc.</i>	
"Lucky draw" sales scheme, using. (<i>See Using contest schemes, etc.</i>)	365, 977
"Made in U. S. A.", misrepresenting foreign product as. (<i>See Advertising, etc.; Misbranding, etc.</i>)	749
Manufacture or preparation of product, misrepresenting as to. <i>See Advertising falsely, etc.; Disparaging, etc.</i>	
Manufacturer, dealer misrepresenting self as. (<i>See Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.; Misrepresenting directly, etc.</i>)	162, 180, 202, 207, 325, 331
Medicinal qualities of product, misrepresenting as to. <i>See Advertising falsely, etc.</i>	
Misbranding or mislabeling:	
As to—	
Branch offices in foreign cities	289
Composition of product	282, 402, 685
Dealer being manufacturer	162
Domestic product being imported	289, 446, 756
Foreign product being "Made in USA"	749
History of product	756
Indorsement or approval of product—British Royal House	282
Manufacture or preparation of product	411
"Custom Built"	162
Nature of product	411, 996
Old, secondhand or used product being new	402
Prices	162
Processor being refiner	402

DESIST ORDERS

Misbranding or mislabeling—Continued.	Page
As to—Continued.	
Reputation, success or standing-----	282
Source or origin of product—	
Place-----	162, 402, 685
Domestic being foreign-----	282, 756
By depictions-----	756
Foreign being "Made in U. S. A."-----	749
Foreign, in general-----	142, 282, 289, 411, 446
Success, use or standing of product—	
Motion picture stars-----	685
Misrepresenting business status, advantages or connections:	
As to—	
Branch offices-----	207
Foreign cities-----	289
British Royal Warrant holders-----	282
"Certification" of diplomas-----	1
Collection agency being—	
Sales agency-----	612
Transportation concern-----	612
Commercial corporation being non-profit health organization-----	504
Connections or arrangements with others—	
Decedents' estates-----	132, 148, 721
Foreign concerns-----	282
Foreign dealers-----	773
Nationally advertised manufacturers-----	207
Newspapers-----	892
Other cities and countries-----	132, 148
U. S. Poultry Improvement Association-----	421
Well-known concern-----	651
Correspondence school being—	
Institute-----	215
University-----	1
Dealer being manufacturer or producer-----	162, 180, 202, 207, 325, 331
Direct dealing advantages-----	162
Foreign—	
Branches-----	594
Connections and arrangements-----	282
Status-----	282, 289
Government—	
Connection-----	520
Recognition-----	1
Source of product-----	470
History of business-----	431
Individual being institute-----	1
Indorsement, approval or sponsorship—	
British Royal House-----	282
Educational authorities-----	1
Government-----	1
U. S. Public Health Service-----	504
Location-----	594, 977
Nature of business-----	132, 148, 504, 520, 594, 612, 721, 773, 892, 977

DESIST ORDERS

Misrepresenting business status, advantages or connections—Continued.

As to—Continued.

	<i>Page</i>
Organization and operation.....	977
Personnel or staff.....	504, 977
Photographer being news service.....	892
Private business being artists' association.....	365
Processor being refiner.....	402
Properties and rights.....	90
Reputation, success or standing.....	282, 431
Correspondence school degrees as recognized by universities.....	1
Government recognition.....	1
Retail store being "factory showroom".....	162
Seller being "Art Studio".....	977
Size and extent.....	207, 307
Stock value.....	325
Unique—	
Nature.....	273
Source.....	470

Misrepresenting directly or orally by self or representatives:

(See also Advertising falsely, etc., and, *in general*, Unfair methods, etc.)

As to—

Agents or representatives—	
Qualifications.....	504
Business status, advantages or connections—	
Connections and arrangements with others—	
Foreign dealers.....	773
Other cities and countries.....	132, 148
Dealer being manufacturer.....	162
Direct dealing advantages.....	162
Financial benefits obtainable.....	132, 148
Indorsement, approval or sponsorship—	
U. S. Public Health Service.....	504
Location of business.....	977
Nature of business.....	132, 148, 773, 892, 977
Organization and operation.....	977
Personnel or staff.....	504, 977
Retail store being "factory showroom".....	162
Seller being "Art Studio".....	977
Size and extent.....	307
Competitive products.....	289
Composition of product.....	260, 307
Coupon values.....	260
Drawing contests.....	365
Free product or service.....	977
Price of which included in charge or service otherwise demanded.....	764
Indorsement, approval or sponsorship of product—	
U. S. Public Health Service.....	504
Lucky draw contest.....	365, 977

DESIST ORDERS

Misrepresenting directly or orally by self or representatives—Continued.

As to—Continued.

	Page
Manufacture or preparation.....	260, 307, 365, 764
"Hand painted".....	977
Nature of product.....	260, 365, 773, 977
Opportunities in product or service.....	773
Photographer being news service.....	892
Prices.....	162, 260, 365
Quality of product.....	764
Sample, offer or order conformance.....	764, 977
Source or origin of product—	
Place—	
Foreign, in general.....	142
Special or limited offers.....	365, 977
Success, use or standing of product.....	773
Terms and conditions.....	260
Small type coupon provisions.....	260
Value of product.....	365, 764, 977

Misrepresenting prices:

As to—

Exaggerated fictitious being regular.....	90, 162, 260, 365, 531, 830, 892
Nature as being—	
Cost of production.....	977
Regular being special reduced.....	260, 365, 830, 892
Retail being wholesale.....	162
Savings and discounts.....	90
Through reduced package content.....	577

Misrepresenting quantity:

Through—

Reduced package content.....	577
------------------------------	-----

Motion picture stars, misrepresenting use of product by. (*See Advertising falsely, etc.; Misbranding, etc.*)..... 685

National Poultry Improvement Plan, misrepresenting connection with. (*See Advertising falsely, etc.; Claiming or using, etc.; Misbranding, etc.*)..... 421

Nationally advertised manufacturers, misrepresenting connections with. (*See Advertising falsely, etc.; Misrepresenting business status, etc.*)..... 207

Nature of:

Business, misrepresenting, as to. *See Advertising falsely, etc.; Misrepresenting business status, etc.*

Product, misrepresenting, as to. *See Advertising falsely, etc.; Using misleading, etc.*

Neglecting, unfairly or deceptive, to make material disclosure:

As to—

Domestic appearing product being "Made in Japan".....	749
New appearing product being of old, secondhand or used material.....	402
Non-standard character of product.....	365, 977
Qualities, properties, or results of product—	
Shape or design.....	977
Reduced package content.....	577
Safety of product.....	195, 300, 457, 504, 531, 668, 696, 875, 920

DESIST ORDERS

	Page
Opportunities in product or service, misrepresenting as to. (<i>See Advertising falsely, etc.; Offering deceptive, etc.; Securing agents, etc.</i>)--	76, 215, 273
Oral misrepresentation by self or representatives. <i>See Misrepresenting directly, etc.</i>	
Origin or source of product, misrepresenting as to. <i>See Advertising falsely, etc.</i>	
Padding orders. (<i>See Enforcing dealings, etc.</i>)-----	651
Permanence of product, misrepresenting as to. (<i>See Advertising falsely, etc.</i>)-----	76, 180, 188, 232, 756
Personnel or staff, misrepresenting as to. (<i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>)-----	504
Photographer misrepresenting self as news service. (<i>See Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.; Misrepresenting directly, etc.</i>)-----	892
Physicians, claiming indorsement by, falsely. (<i>See Claiming or using, etc.</i>)-----	668
Place of origin of product, misrepresenting as to. <i>See Advertising falsely etc.; Misbranding, etc.; Using misleading, etc.</i>	
Pooling chain store orders, to earn quantity discounts. (<i>See Discriminating in price</i>)-----	25
Postal laws conformance, misrepresenting as to. (<i>See Advertising falsely, etc.</i>)-----	180
Preventive qualities of product, misrepresenting as to. (<i>See Advertising falsely, etc.</i>)-----	315, 541, 668, 875, 911
Price differentials, discriminating in price through. (<i>See Discriminating in price</i>)-----	640
Prices, misrepresenting as to. <i>See Advertising falsely, etc.; Misrepresenting prices.</i>	
Producer, dealer misrepresenting self as. <i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>	
Properties and rights, misrepresenting as to. (<i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>)-----	90
Protective qualities of product, misrepresenting as to. (<i>See Advertising falsely, etc.</i>)-----	315, 541, 668, 875, 911
Qualities, properties or results of product, misrepresenting as to. <i>See Advertising falsely, etc.</i>	
Quality of product, misrepresenting as to. (<i>See Advertising falsely, etc.; Securing agents, etc.</i>)-----	226, 232, 245, 482
Quantity of product, misrepresenting as to. (<i>See Advertising falsely, etc.; Misrepresenting quantity</i>)-----	577
Questionnaire forms for locating delinquent debtors, supplying false and misleading. (<i>See Furnishing means, etc.</i>)-----	132, 148, 721
Quotas, allocating, among members in price fixing combination. (<i>See Combining or conspiring</i>)-----	488
Rate book, standard, as instrument in price fixing scheme. (<i>See Combining or conspiring</i>)-----	957
Raw material source, misrepresenting. (<i>See Advertising falsely, etc.</i>)----	651
Reducing qualities of product, misrepresenting as to. (<i>See Advertising falsely, etc.</i>)-----	110
Refiner, processor representing self falsely as. (<i>See Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.</i>)--	402

DESIST ORDERS

	Page
Refusal to sell to competitors' distributors, in price fixing schemes. (<i>See</i> Combining or conspiring.)	790
Refusal to sell to non-members of trade association, in price fixing combination. (<i>See</i> Combining or conspiring.)	488
Remedial qualities of product, misrepresenting as to. <i>See</i> Advertising falsely, etc.	
Reproductions, misrepresenting product as being. (<i>See</i> Advertising falsely, etc.)	325, 446
Reputation, success or standing of business, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.)	1, 282, 431
Resistance standards, adopting uniform. (<i>See</i> Combining or conspiring.)	336
Results of product, misrepresenting as to. <i>See</i> Advertising falsely, etc.	
Run-proof qualities of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)	76
Safety of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Neglecting, etc.)	110, 195, 300, 457, 504, 668, 920, 942
Sales agency, collection agency misrepresenting as. (<i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.)	612
Sales data, collecting and disseminating among members, in price fixing combination. (<i>See</i> Combining or conspiring.)	488
Sales taxes, state, refusing assumption of. (<i>See</i> Combining or conspiring.)	336
Sample conformance, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; etc.; Offering deceptive, etc.)	76, 232
Savings and discounts, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Misrepresenting prices.)	90
Scientific or relevant facts, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)	215, 626, 668
Securing agents or representatives falsely or misleadingly:	
Through misrepresenting—	
Earnings or profits	76
Free product or samples—	
Price of which included in charge or service otherwise demanded	76
Nature of business	504
Opportunities	273
Quality of product	76
Terms and conditions	76, 738
Securing orders falsely or misleadingly:	
Through—	
Confusing orders and forms	651
Securing signatures wrongfully:	
Through—	
Confusing orders and forms	651
Services and facilities, discriminating in price through allowances for. (<i>See</i> Discriminating in price)	477
Shipping, for payment demand, goods in excess of order:	
Through—	
Padded order goods	651
Simplicity of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)	504
Size of business, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.)	207, 307

DESIST ORDERS

	Page
Snag- and run-proof qualities of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.).....	76
Source or origin of product, misrepresenting as to. <i>See</i> Advertising falsely, etc.	
Special or limited offers of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Offering deceptive, etc.).....	260, 531
Specifications, misrepresenting as to conformance to government. (<i>See</i> Advertising falsely, etc.).....	470
Spying on competitors:	
Through—	
Fictitious customer inquiries.....	382
Stainless qualities of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.).....	188
Standards, adopting uniform, with price fixing effect. (<i>See</i> Combining or conspiring.).....	336
Stars, motion picture, misrepresenting use of product by. (<i>See</i> Advertising falsely, etc.; Misbranding, etc.).....	685
State sales taxes, refusing assumption of. (<i>See</i> Combining or conspiring.)	336
Stock, misrepresenting as to. (<i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.).....	325, 470
Success of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.).....	482, 773, 905
Tax absorption, misrepresenting as to. (<i>See</i> Offering deceptive, etc.)...	577
Teachers, claiming indorsements by, falsely. (<i>See</i> Claiming or using, etc.)...	668
Terms and conditions, misrepresenting as to. <i>See</i> Advertising falsely, etc.; Offering deceptive, etc.	
Testimonials, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)....	457, 668
Tests of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)....	232, 421, 482, 942
Therapeutic qualities of product, misrepresenting as to. (<i>See</i> Advertising falsely, etc.)... 170, 315, 457, 504, 531, 541, 626, 668, 696, 707, 866, 875, 920, 933	
Transportation concern, collection agency misrepresenting as. (<i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.).....	612
U. S. Poultry Improvement Association, misrepresenting connections with. (<i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.).....	421
Unfair methods of competition, etc., condemned in this volume. <i>See</i> —	
Advertising falsely or misleadingly.	
Aiding, assisting or abetting unfair or unlawful act or practice.	
Assuming or using misleading trade or corporate name.	
Claiming or using indorsements or testimonials falsely or misleadingly.	
Coercing and intimidating.	
Combining or conspiring.	
Concealing or obliterating foreign source marking.	
Cutting off competitors' access to customers or market.	
Cutting off competitors' sources of supply.	
Dealing on exclusive and tying basis.	
Discriminating in price.	
Disparaging or misrepresenting competitors or their products.	
Enforcing and exacting, wrongfully, customer dealing.	

STIPULATIONS

U. S. Public Health Service, claiming endorsement of, falsely. (See Advertising falsely, etc.; Claiming or using, etc.; Misrepresenting directly, etc.; Misrepresenting business status, etc.)	Page 504
Use of product, misrepresenting as to. (See Advertising falsely, etc.)	482
Uniform bids, submitting. (See Combining or conspiring.)	336
Unique nature of:	
Business, misrepresenting as to. (See Advertising falsely, etc.; Misrepresenting business status, etc.)	273
Product or service, misrepresenting as to. (See Advertising falsely, etc.)	76, 105, 273, 431, 482, 541, 942
University laboratories, misrepresenting as to tests by. (See Advertising falsely, etc.; Claiming or using, etc.)	942
Warehouse rental and service allowances, discriminating in price through. (See Discriminating in price.)	25
Weight of product, misrepresenting as to. (See Advertising falsely, etc.)	180
"Whips" or bogus independents, operating to take business and discipline members. (See Combining or conspiring; Operating, etc.)	382
Withholding customer property unfairly (See Coercing, etc.; Enforcing customer, etc.)	977
Withholding supplies from competitors' customers. (See Cutting off competitors' access, etc.)	488

STIPULATIONS¹

Advertising falsely or misleadingly:

As to—

Ailments and symptoms generally	1046 (3642), 1051 (3648), 1059 (3656)
Diet	1016
Food vitamins	1016
Business status, advantages or connections—	
Comparative dealer data	1049 (3643)
Connections and arrangements with others	1061
Associated companies	1041 (3639), 1044
Prominent manufacturer	1041 (3638)
Technical	1041 (3638)
Dealer being—	
Laboratory	1098 (03120)
Manufacturer or producer	1024 (3617), 1029, 1013 (3605, 3606), 1028 (3623), 1037, 1041 (3638), 1055, 1066, 1072 (3672, 3673, 3674).
By depictions	1028 (3623)
Identity	1028 (3623), 1044, 1061
Individual being corporation	1067 (3664)
Manufacturer's representative	1034
Organization	1041 (3638)
Personnel or staff	1025
Plant	1041 (3638)

¹ Page references to stipulations of the radio and periodical division are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number of the stipulation, e. g., "01", "02", etc.

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Business status, advantages or connections—Continued.

Page

Private business being—

"Associated" or "Cooperative"..... 1072 (3672)

"Board of Examinations"..... 1025

Institute..... 1031

"Medical Council"..... 1025

University..... 1025

Retail being wholesale..... 1015 (3609)

Success, reputation, etc..... 1041 (3639), 1044

Time in business..... 1028 (3623), 1031, 1061

Unique nature of business..... 1035 (3632), 1041 (3639), 1044

Volume of sales—

By photostats..... 1055

Comparative merits..... 1024 (3617),

1033, 1041 (3639), 1044, 1049 (3644), 1055, 1069 (3669), 1078

Comparative prices..... 1024 (3617)

Comparative values..... 1055

Competitors and their products..... 1016, 1028 (3623), 1033,

1041 (3639), 1044, 1059 (3656), 1069 (3669), 1073, 1075, 1078

Composition of product..... 1007 (3596),

1010 (3601), 1015 (3610), 1037, 1046 (3642), 1057 (3654),

1059 (3655), 1082 (03090), 1086 (03095), 1089 (03100).

Fiber content..... 1009 (3600),

1013 (3606), 1020, 1021, 1022 (3614, 3615), 1024 (3618).

1026, 1038, 1039.

By depictions..... 1038

Foreign ingredients..... 1035 (3632)

"14-Kt Gold"..... 1075

"Gold"..... 1028 (3623)

"Silver"..... 1035 (3631)

Unmentioned ingredients..... 1077

Coupon values..... 1075

Demand..... 1061

Doctor's design or supervision..... 1013 (3605)

Domestic product being imported..... 1012,

1021, 1028 (3622), 1077

Equipment..... 1096 (03117)

"Facsimile" or "reproduction"..... 1075

Foreign product being domestic..... 1014

"Made in USA"..... 1008 (3597, 3598)

Former name of product..... 1093 (03108)

Free product or service—

Price included in charge or service otherwise demanded..... 1035

(3632), 1057 (3654), 1096 (03117)

Government—

Indorsement, sponsorship or approval..... 1015 (3610),

1041 (3639), 1044, 1071

Needs..... 1014

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

	Page
Government—Continued.	
Reports.....	1069 (3669)
Specifications.....	1024 (3617)
Guarantees.....	1007 (3409), 1057 (3654), 1075, 1096 (03117)
Lloyds' of London.....	1091 (03104)
History—	
Doctor's design or supervision.....	1013 (3605), 1031, 1037, 1052, 1053, 1059 (3656), 1072 (3674)
Indorsements, sponsorship or approval—	
Government.....	1041 (3639), 1044, 1071
Bureau of Standards.....	1033, 1069 (3669)
"Official U. S. Army".....	1015 (3610)
Phonograph manufacturers.....	1049 (3644)
Scientists.....	1046 (3642)
Jobs and employment—	
"Help Wanted" columns.....	1071
Labeling compliance—	
U. S. Dept. of Agriculture.....	1082 (03090)
Manufacture or preparation.....	1055
"Bench made".....	1010 (3602), 1035 (3632), 1052
"Customized".....	1052
"Custom made".....	1010 (3602), 1035 (3632), 1067 (3665)
Doctor's design or supervision.....	1013 (3605), 1052
Equipment.....	1026
"4 fold".....	1057 (3653)
"Hand-made".....	1052
"Hand tooled".....	1057 (3654)
"Silver-clad".....	1035 (3631)
Nature of product.....	1007 (3596), 1016, 1030, 1031, 1037, 1039, 1041 (3636), 1053, 1069 (3669), 1074, 1081 (03088), 1082 (03090)
Old, second-hand or reclaimed product being new.....	1050 (3646)
Performance bonds.....	1007 (3409)
Prices.....	1009 (3599) 1014, 1015 (3509), 1034, 1041 (3638), 1057 (3654), 1061, 1075, 1096 (03117)
Qualities, properties or results of product or service—	
Anti-freeze.....	1011
Antiseptic or germicidal.....	1030, 1081 (03088)
Auxiliary, improving and supplementary.....	1016, 1029, 1046 (3642), 1067 (3664), 1081 (03089), 1096 (03116)
Beneficial.....	1085 (03093)
Cleansing.....	1082 (03090)
Contraceptive.....	1089 (03099)
Cosmetic.....	1037, 1053, 1056, 1088 (03097), 1089 (03100), 1091 (03104), 1094, 1095 (03114), 1097

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Qualities, properties or results of product or service—Continued.	Page
Durability.....	1075, 1049 (3644)
Economizing.....	1096 (03116), 1097
Educational.....	1061, 1069 (3668)
Functional.....	1011, 1024, (3617), 1027, 1029, 1030, 1049 (3644), 1051 (3647), 1055, 1059 (3656), 1061, 1067 (3664), 1068 (3667), 1069 (3668), 1078, 1085 (03092), 1091 (03103), 1093 (03109), 1096 (03117)
Insecticidal—	
Moth proofing.....	1066, 1082 (03090)
Medicinal, therapeutic, remedial and healthful.....	1016, 1023, 1030, 1031, 1037, 1041 (3637), 1046 (3642), 1051 (3648), 1052, 1053, 1069 (3669), 1070, 1074, 1079, 1081 (03088), 1082 (03090), 1083, 1085 (03093), 1086 (03094), 1087, 1088 (03098), 1090 (03101, 03102), 1091 (03104, 03105), 1092 (03106), 1093 (03108), 1094, 1096 (03115), 1097, 1098 (03120)
Non-conducting.....	1082 (03090)
Nutritive.....	1089 (03100), 1090 (03101)
Preventive or protective.....	1011, 1031, 1091 (03105), 1094, 1097
Productivity.....	1073, 1093 (03110)
Reducing.....	1016, 1085 (03092), 1097
Rejuvenating or revitalizing.....	1046 (3642)
Renewing or restoring.....	1067 (3664), 1082 (03090), 1088 (03097), 1094, 1095 (03112)
Rodenticidal.....	1027, 1082 (03090)
Simplicity.....	1076, 1095 (03112), 1096 (03117)
Unique nature.....	1073
Water proofing and dampproofing.....	1033, 1035 (3630), 1082 (03090)
Quality of product.....	1034, 1049 (3644), 1072 (3674), 1078
Quantity.....	1077
"Reproductions".....	1034
Safety.....	1011, 1079, 1082 (03090), 1088 (03097), 1089 (03099), 1097
Scientific or relevant facts.....	1024 (3617), 1046 (3642), 1051 (3648), 1059 (3656), 1066, 1073, 1078
Diet.....	1016
Food vitamins.....	1016
Government needs.....	1014
Scope.....	1068 (3667)
Service.....	1041 (3639), 1044
Size.....	1068 (3667)
Source or origin of product:	
Government, "R. O. P.".....	1072 (3674)
Maker.....	1010 (3602), 1028 (3623), 1057 (3654)
Place.....	1035 (3632), 1072 (3674)
Domestic product being imported.....	1010 (3602), 1028 (3622), 1035 (3632)
Foreign product being domestic.....	1014
"Made in USA".....	1008 (3597, 3598)
Foreign, in general.....	1038, 1052

STIPULATIONS .

Advertising falsely or misleadingly—Continued.

As to—Continued.	Page
Special and limited offers.....	1082 (03090)
Standards conformance:	
Government.....	1024 (3617)
Success use or standing of product..	1034, 1061, 1075, 1093 (03109)
Terms.....	1007 (3409), 1014, 1061
Testimonials.....	1069 (3668)
Tests.....	1072 (3674)
Reader's Digest.....	1099
Unique nature.....	1028 (3623),
1041 (3639), 1044, 1046 (3642), 1049 (3644), 1053, 1061	
Value.....	1035 (3632), 1055

Aiding, assisting, or abetting unfair or unlawful act or practice:

As to—	
Preparing false and misleading advertising matter.....	1044,
1056, 1088 (03098), 1090 (03102), 1093 (03110), 1094, 1095	
(03114), 1099 (03121).	

Assuming or using misleading trade or corporate name:

As to—	
Connections.....	1061
Prominent manufacturer.....	1041 (3638)
Dealer being—	
Laboratory.....	1037, 1098 (03120)
Manufacturer.....	1013 (3605),
1029, 1041 (3638), 1072 (3672)	
Identity.....	1028 (3623)
Individual being—	
Corporation.....	1067 (3664)
Private business being—	
"Associated" or "Cooperative".....	1072 (3672)
"Board of Examinations".....	1025
Institute.....	1031
"Medical Council".....	1025
University.....	1025
Time in business.....	1028 (3623)

Claiming or using indorsements or testimonials falsely or misleadingly:

As to or from—	
Government.....	1041 (3639), 1044, 1071
Bureau of Standards.....	1033, 1069 (3669)
"Official U. S. Army".....	1015 (3610)
Phonograph manufacturers.....	1049 (3644)
Scientists.....	1046 (3642)
Users, in general.....	1069 (3668)

Delaying or withholding corrections or adjustments unjustly:

As to—	
Refunds.....	1061

Disparaging or misrepresenting competitors or their products:

Competitors—	
In general.....	1041 (3639)
Integrity.....	1075

STIPULATIONS

Disparaging or misrepresenting competitors or their products—Continued. Page

Products—

Currency.....	1059 (3656)
In general.....	1041 (3639), 1044
Manufacture.....	1028 (3623)
Qualities, properties or results	
Functional.....	1016, 1059 (3656), 1069 (3669), 1078
Hardihood.....	1073
Water-proofing.....	1033

Misbranding or mislabeling:

As to—

Composition of product—

Fiber content.....	1009 (3600), 1013 (3606), 1020, 1021, 1022 (3614, 3615), 1024 (3618), 1026, 1059 (3655).
--------------------	--

Domestic product being imported.....	1012, 1021, 1077
--------------------------------------	------------------

Manufacture or preparation of product—

"Bench Made".....	1010 (3602)
"Custom made".....	1010 (3602)

Nature.....	1041 (3636), 1083 (36091)
-------------	---------------------------

Prices.....	1009 (3599), 1029, 1077
-------------	-------------------------

Source or origin of product—

Maker.....	1010 (3602), 1028 (3623), 1057 (3654)
------------	---------------------------------------

Place—

Domestic being imported.....	1010 (3602)
------------------------------	-------------

Foreign.....	1053
--------------	------

Misrepresenting business status, advantages or connections:

As to—

Comparative dealer data.....	1049 (3643)
------------------------------	-------------

Connections and arrangements with others.....	1061
---	------

Associated companies.....	1041 (3639), 1044
---------------------------	-------------------

Prominent manufacturer.....	1041 (3638)
-----------------------------	-------------

Technical.....	1041 (3638)
----------------	-------------

Dealer being—

Laboratory.....	1036, 1098 (36120)
-----------------	--------------------

Manufacturer or producer.....	1012 (3605), 1013 (3606), 1024 (3617), 1028 (3623), 1029, 1037, 1041 (3638), 1055, 1066, 1072 (3672, 3673, 3674).
-------------------------------	---

Foreign branches.....	1041 (3639) 1044
-----------------------	------------------

Identity.....	1028 (3623) 1044, 1061
---------------	------------------------

Individual being corporation.....	1067 (3664)
-----------------------------------	-------------

Manufacturer's representative.....	1034
------------------------------------	------

Organization.....	1041 (3638)
-------------------	-------------

Personnel or staff.....	1025, 1041, (3638)
-------------------------	--------------------

Private business being—

"Associated" or "Cooperative".....	1072 (3672)
------------------------------------	-------------

"Board of Examinations".....	1025
------------------------------	------

Institute.....	1031
----------------	------

"Medical Council".....	1025
------------------------	------

University.....	1025
-----------------	------

Retail being wholesale business.....	1015 (3609)
--------------------------------------	-------------

Success.....	1041 (3639), 1044
--------------	-------------------

STIPULATIONS

Misrepresenting business status, advantages or connections—Continued.

As to—Continued.	Page
Time in business.....	1028 (3623), 1031, 1061
Unique nature.....	1035 (3632), 1041 (3639), 1044
Volume of sales—	
By photostats.....	1055

Misrepresenting prices:

As to—	
Comparative.....	1024 (3617)
Exaggerated fictitious being regular.....	1009
(3599) 1014, 1015 (3609), 1029, 1034, 1057 (3654), 1075, 1077	
Nature as—	
Advertising, etc.....	1075
Mill.....	1041 (3638)
Regular being—	
Low or discounted.....	1009 (3599), 1075
"Special contributor's".....	1061
Special introductory.....	1096 (03117)

Neglecting, unfairly or deceptively, to make material disclosure:

As to—	
Composition of product—	
Fiber content.....	1009 (3600), 1013 (3606), 1020, 1021, 1022
(3614), 1024 (3618), 1026, 1032, 1039, 1057 (3653)	
New-appearing product being old or second-hand.....	1050
Safety of product.....	1056 (3656), 1069 (3669), 1074, 1079, 1085
(03092), 1086 (03095), 1087 (03096), 1088 (03097), 1092	
(03017), 1095 (03113), 1097, 1098 (03120).	

Size or dimensions—

Cut and finished....	1063, 1064 (3659, 3660), 1065 (3661, 3662)
----------------------	--

Terms and conditions.....	1061
---------------------------	------

Offering deceptive inducements to purchase (*See also*, Misrepresenting prices, and, in general, Unfair methods, etc.):

Through representing or offering, falsely or misleadingly—

Coupon values.....	1075
Discount cards.....	1015 (3609)
Free product or service—	
Price of which included in charge or service otherwise de-	
manded.....	1035 (3632), 1057 (3654), 1096 (03117)
Government needs.....	1014
Guarantees.....	1007 (3409), 1057 (3654), 1096 (03117)
Lloyds' of London.....	1091 (03104)
Jobs and employment—	
"Help Wanted" columns.....	1071
"Lifetime Guarantees".....	1075
Performance bonds.....	1007 (3409)
Special or limited offers.....	1082 (03090), 1096 (03117)
Terms and conditions—	
Performance bonds.....	1007 (3409)
Publication of solicitee's "outstanding" article.....	1061
"Trade-ins".....	1014

STIPULATIONS

Simulating:	Page
Name of competitive product.....	1010 (3601)
Name or brand of competitor.....	1010 (3602)
Unfair methods of competition, etc., condemned in this volume. <i>See—</i>	
Advertising falsely or misleadingly.	
Aiding, assisting or abetting unfair or unlawful act or practice.	
Assuming or using misleading trade or corporate name.	
Claiming or using indorsements or testimonials falsely or misleadingly.	
Delaying or withholding corrections or adjustments unjustly.	
Disparaging or misrepresenting competitors or their products.	
Misbranding or mislabeling.	
Misrepresenting business status, advantages or connections.	
Misrepresenting prices.	
Neglecting, unfairly or deceptively, to make material disclosure.	
Offering deceptive inducements to purchase.	
Simulating.	
Using lottery schemes in merchandising.	
Using misleading product name or title.	
Using lottery schemes in merchandising.....	1046 (3641)
Using misleading product name or title:	
As to—	
Business status, advantages or connections—	
Personnel.....	1025
Composition.....	1007 (3596), 1010
(3601), 1015 (3610), 1057 (3654), 1082 (03090), 1098 (03100)	
Fiber content.....	1013
(3606), 1020, 1021, 1022 (3614, 3615), 1024, 1026, 1038, 1039	
Foreign ingredients.....	1035 (3632)
"14-Kt. Gold".....	1034, 1075
"Gold".....	1028 (3623)
"Silver".....	1035 (3631)
Doctor's design.....	1013 (3605)
Domestic product being imported.....	1012, 1021, 1028 (3622)
Guarantees.....	1075
History—	
Doctor's design or supervision.....	1013 (3605)
Identity.....	1061
Manufacture or preparation—	
"Bench-made".....	1035 (3632), 1052
"Customized".....	1052
"Custom-made".....	1035 (3632), 1067 (3665)
Doctor's design or supervision.....	1013 (3605)
"Hand made".....	1052
"Silver-clad".....	1035 (3631)
Nature.....	1007 (3596),
1030, 1037, 1039, 1041 (3636), 1082 (03090), 1083 (03091)	

STIPULATIONS

Using misleading product name or title—Continued.

As to—Continued.

Page

Qualities, properties or results—

Auxiliary, improving and supplementary..... 1029

Contraceptive..... 1089 (03099)

Functional effectiveness, operation or scope, in general..... 1029,
1030, 1096 (03117)Medicinal, therapeutic, remedial and healthful..... 1052,
1092 (03106)

Water-proof..... 1033

Source or origin of product—

Maker..... 1028 (3623), 1057 (3654)

Place..... 1035 (3632)

Domestic product being imported..... 1010
(3602), 1028 (3622, 3623), 1035 (3632), 1038

Foreign in general..... 1038, 1052

Reproductions..... 1034

